MAULANA MAUDUDI
AND THE
ISLAMIC STATE

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Dedicated to my father

Sayed Shah Abdul Aziz

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PREFACE

This is a historically oriented investigation of Maulana Maudûdi's political ideas regarding the concept of the Islamic State in the sense that it attempts not only to study him in his Pakistani milieu but also relates him with the main-stream of traditional and recent ideas on the nature and concept of the Islamic State.

Muslim Political Theory in the sub-continent was in a state where further development would not have been possible but for the creation of Pakistan. Pakistan afforded an opportunity for many learned authorities on Islam to look deeper and investigate the nature of the Islamic State. Maulana Maududi's work in this respect is not of a mean order. There is no dearth of books on him, but some try to 'bury Caesar' and the rest 'praise him'. What was needed was an impartial investigation and assessment of his work and this is what I have attempted to provide.

This work is based on my researches for a Ph.D. degree for the University of Durham. The work has been enlarged and at least one chapter has since been added.

In the first chapter the traditional political theory in Islam is set out to provide an understanding of the basic concepts. The second chapter takes up Maulana Maududi's early development and traces some of the recent movements in Islam in as much as they have influenced his ideas. The third and the fourth chapters lay down the problems of constitution-making in Pakistan and endeavour to clarify the issues involved. In the subsequent chapters Constitution, Law, Jihad, Economic Theory of Islam and position of non-Muslims and Women in the Islamic State as envisaged by the Maulana are discussed and investigated.

I am deeply indebted to many institutions and people. Without a research scholarship from the University of Peshawar this study would not have been undertaken. I wish to thank the libraries of the British Museum, the School of Oriental and African Studies of London University and the School of Oriental Studies of Durham University for the

facilities they extended to me. I am also indebted to Professor C. H. Dodd, who in spite of moving to the University of Manchester continued to supervise this work. The completion of this study would not have been possible but for the guidance given me by him. He discussed many problems with me with meticulous and friendly care. The debt, extensive as it is, is not of the kind that can be repaid except by making it even greater.

I also wish to put on record my gratitude to Professor J.A. Haywood and Mr. Afzal Iqbal who made some very useful suggestions. I would also like to thank my father, Sayed Shah Abdul Aziz and Mr. Shareef Hilal of the Islamia College, Lahore, for their help in collecting rare books and periodicals and the Rev. A. Spurr, Mr. Brian Thaxton and Miss Margaret Harbottle, Professor Emeritus, University of Peshawar, who read the draft at various stages and advised me about the problems arising from the intricacies of language. I also owe a special debt to Mrs. C. Bates of the Department of Oriental Studies at University of Durham and M.K. Bhatti for typing out the manuscript with the greatest of care.

My special gratitude must be expressed for the infinite pains taken by my publisher Mr. Rauf Malik of the People's Publishing House and Mr. Azeez Zia of the Awami Press Limited in the production of this book.

Last but not the least my wife Saeeda must also be deeply thanked for her part in making this work possible.

Sayed Riaz Ahmad
Quetta
July 1975.

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Discrepancies in transliteration occur due to the need to produce in quotation the spellings adopted by various authors, e.g., *Sharia, Shariah, Shariat* or *Khilafa, Khilafah*, or in case of names Muhammad or Mohammad. The movement in favour of the Ottoman *Khilafa* in the sub-Continent has, however, been referred to as *Khilafat Movement* because of usage.

A consistent system of transliteration could not be followed because of use of Urdu, Arabic, Persian and Hindi words. Furthermore it must be noted that the transliteration adopted for the manuscript had to be changed due to the limitations in printing diacritical marks.

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Scheme for transliteration of Arabic and Urdu :

(i) Consonants and diphthongs

ب	b	ع	‘
ت۔ ٹ۔ ط	t	غ	gh
تھ۔ ث	th	ف	f
ج	j	ق	q
چ	ch	ک	k
ح۔ ہ۔ ھ	h	گ	g
خ	kh	ل	l
د۔ ڈ۔ ض	d	م	m
ذ	dh	ن	n
ر	r	و	w, u
ڑ	rh	ی	i
ز۔ ظ	z	ے	ay, ai
س ص	s	و	au, aw
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ذ	dh	ن	n
ر	r	و	w, u
ڑ	rh	ی	i
ز ۔ ظ	z	ے	ay, ai
س ص	s	و	au, aw
ش	sh	پ	p

hamza (ء) not shown when initial otherwise ʼ

(ii) Vowels

short damma,	(ُ)	u
short fatha	(َ)	a
short kasra	(ِ)	i
long damma	(ُو)	u
long fatha	ـَا	a
long kasra	ـِي	i

CHAPTER I

ISLAM IN HISTORY

Pre-Islamic society was composed of tribes not always at peace with one another. Politically, the advent of Islam had the effect of combining the hostile tribes into a single community. Islam brought together men of differing traditions and customs. For this, *Qur'an* the divinely revealed book, provided the binding force.

Islam is a religion based on *tauhid* (belief in one God) which teaches that God is the ultimate basis of all life. It is a universal and not a national religion. The message of the *Qur'an* was addressed to the whole of mankind and not to any one nation: "O mankind! Lo! we have created you male and female, and have made you nations and tribes that ye may know one another. The noblest of you in the sight of God is the best in conduct."[1]

Islam was more than a set of beliefs and methods of worship. It established a polity. Islam did not make a distinction between what was religious and what was temporal. "The ultimate reality, according to the *Qur'an,* is spiritual and its life consists in its temporal activity. The spiritual finds its opportunities in the natural, the material, the secular! All that is secular is therefore sacred in the roots of its being."[2] Muhammad (peace be upon him) not only preached from the pulpit a system of ethics but also planned and organised a state. Watt points out that Islamic history did not begin in the year that Muhammad was born, nor in the year that he received his first revelation, but when the Muslim community established a state in Medina.[3]

The Statute of Medina was drawn up as a code of rights and obligations between the Muslim *Umma* on the one hand and the Jewish tribes of Medina on the other. The term *Umma*

[1] *Qur'an* (Pickthall Translation xli x: 13

[2] Muhammad Iqbal. *Six Lectures on Reconstruction of Religious Thought in Islam.* (Kapur, Lahore, 1930) p. 217.

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was used in the Statute in the social, religious and political contexts to refer to Muslims, while all the Jewish tribes were mentioned by name. The Statute sought to grant certain privileges and to impose certain duties on all those members of the communities who had accepted it—Muslims, Jews, pagans. From this document emerges the concept of *dhimma* of God, which meant mutual protection of all the members of the community created under the provisions of the Statute. The Statute provided that "The Jews who attach themselves to our commonwealth shall be protected from all insults and vexation; they shall have equal right with our own people to our assistance and good offices: the Jews of the various branches and all others domiciled in Yathrib, shall form with the Muslims, one composite nation; they shall practice their religions as freely as the Muslims."[1]

During the life of the Prophet the community was directed by the *Qur'an*, which was the final revelation of God. Thus his position as the last of the Prophets of God made him the director of the *Umma*. The Statute of Medina had stipulated that "All future disputes between those who accept the charter shall be referred under God to the Prophet."[2] This meant that the paramount control of political, legislative, religious and military policy was in his hands. But as Levy points out, Muhammad did not act on his own accord but merely announced what God commanded.[3] The Prophet did not appoint a successor: As soon as his most faithful companions Abu Bakr, Umar and Abu 'Ubaida heard the news of his death, they proceeded to the place where the chief of Banu Khazraj were holding a meeting to elect a new chief. After some discussion the election of Abu Bakr was carried by acclamation, and those present offered their allegiance. Abu Bakr described his office as *Khalifat-ur-Rasul* (successor to the Prophet). It was in this manner that the title *Khalifa* originated. Abu Bakr in turn nominated 'Umar, who received an oath of allegiance from the members of the

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[3] Levy. *Sociology of Islam*, Vol. 1, p. 283.

community. 'Umar nominated a body of six electors to appoint a *Khalifa* from amongst themselves.

It seemed clear to the Muslims that the revelation, of which the Prophet was the instrument, was the final and complete code of life. Thus the *Qur'an*, together with the Prophet's precepts and examples, must form either explicitly or by implication all that was necessary to live rightly. In course of time the text of the *Qur'an* was compiled under the *Khilafat* of 'Uthman, and later the traditions *(Hadith)* of what the Prophet did and said *(Sunna,)* the Prophet's practices, were collected and examined. In course of time there was also evolved from the *Qur'an* and the *Hadith* a comprehensive system of ideal morality and law which was to make clear the way to Allah *(Shari'a)*. *Shari'a* covered men's relations with each other and with God. When there was a clear text of the *Qur'an* or *Hadith* of which the validity could be accepted, this was simple; otherwise those who possessed the necessary intellect and learning (the *'Ulama')* deduced the answers from the texts, by using their minds in accordance with the rules of strict analogy (*Qiyas*) or some other process of reasoning. Thus *ijtihad* was brought into action. Gradually the results of this process were accepted by the common opinion of the community and the learned. When this general acceptance existed (*ijma'*), it came to be regarded as conferring on precepts or laws a certain authority. It was thus the task of the *'Ulama'* to integrate the political, social and economic life of their age into the *Shari 'a*. But the real symbol of authority to effect *ijtihad* was the *Khalifa*. It is mainly because of this that the *Khalifa* has remained at the root of all political debate in Islam.

To found and lead a community was part of the essential function of the Prophet and his successors. However, quite early in the life of Islam, there arose two influential views of *Khilafa*. The *Shi'a* group held that Muhammad's authority had passed, firstly, to his son-in law 'Ali, and subsequently, to a line of his descendants. The members of this line, the *Imams*, possessed, in *Shi'a* belief, not only political authority but also the power of infallible interpretation of the *Qur'an*.

The *Sunnis*, on the other hand, held that the authority had passed on to the *Khalifas*, the leaders designated and accepted by the community, and that the *Khalifas* took up only a part of the Prophet's functions and powers. True sovereignty rested was used in the Statute in the social, religious and political contexts to refer to Muslims, while all the Jewish tribes were mentioned by name. The Statute sought to grant certain privileges and to impose certain duties on all those members of the communities who had accepted it—Muslims, Jews, pagans. From this document emerges the concept of *dhimma* of God, which meant mutual protection of all the members of the community created under the provisions of the Statute. The Statute provided that "The Jews who attach themselves to our commonwealth shall be protected from all insults and vexation; they shall have equal right with our own people to our assistance and good offices: the Jews of the various branches and all others domiciled in Yathrib, shall form with the Muslims, one composite nation; they shall practice their religions as freely as the Muslims."[1]

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The early *Khilafa* was based on the precept that the appointment of the *Khalifa* should be supported with the acceptance of the *Umma*, and its expressed wish that allegiance be given to the appointed *Khalifa*. With the advent of the Umayyids, however, although the *Khilafa* changed from elective to a hereditary office, the essential allegiance was secured by the existing *Khalifa* by nomination of his son or other relation, and this person was then offered to the community as the appointed future *Khalifa*. This was followed by an oath of allegiance.

Orthodox Islamic political theory, however, is the product of the Abbasid period. Under the Abbasids, the Persian converts had come to the front. Theologians and men of learning received welcome in the Abbasid court, and all branches of learning connected with *Shari'a* received a great impetus under the patronage of the *Khalifas*. During this period schools of *fiqh* (jurisprudence) also developed. Out of these, four schools of *fiqh—Maliki, Shaf'i, Hanbali* and *Hanafi*—were the best known. These schools evolved because of differences in interpretations of the main sources of *Shari'a*, namely the *Qur'an*, the *Hadith* and the *Sunna*. Under the earlier Abbasids, power was almost exclusively in the hands of the caliphs and the wazirs, but the relationships between the ruling institutions and those ruled were largely in accord with Islamic principles as stated in the *Shari'a*.

In the latter part of the tenth and the beginning of the eleventh centuries, the *Khalifa's* authority began to be challenged. Provincial governors began to wield powers, including the command of armies which they kept and managed. Sometimes they extended their boundaries and then asked the Caliphs to ratify them. The Caliphs, in cases like this, hardly had an alternative. At length demands came that the *Khalifa* should endorse making these governorships hereditary. To this demand, as to others, the *Khalifa* had to accede. Having large armies and political sway over large areas, they could hardly be expected to obey such orders of the *Khalifa* as they found distasteful. This was particularly true of the *Shi'a* Buwaihid Amirs, the Tahirids, the Samanids and the Sunni Ghaznavids. Any study of this period must, therefore, take full cognizance of the current constitutional power struggle. However, it is also important that these princes, although they were in effective control over large areas, did not question the office of the *Khalifa*. By professing loyalty to the *Khalifa*, Mahmud of Ghazna and others, a new avenue of theoretical justification of the *Khilafa* was provided. It was at this stage that the *Khalifa* began to give his princes investiture in the papal manner. At this stage al-Mawardi[1] wrote *Ahkam-as-Sultaniya*, in an attempt to assert the authority of the Abbasid *Khalifa* against the Buwaihid Amirs. It is to his theory of *Khilafa* mainly that the name of classical theory is applied. Mawardi's purpose was to reassert that legitimate power could lie only in the hands of the *Khalifa*. It is by this reassertion that he intended to preserve the Unity of the Muslim community. He insisted on the necessity of the Imam by saying that "the *Imamat* is established to replace prophecy in the defence of the faith and the administration of the world."[2] Al-Mawardi's theory was basically a refutation of the *Shi'a* claim to *Imamat*. Realizing that the unity of the Muslim *Umma* was in danger, he insisted upon the *Khalifa* being an active ruler and not merely a figure-head. It was mainly for this purpose that he made stringent demands about the personal qualities of the *Khalifa*. The qualities he listed are:

1. *'Adala* : Administration of Justice
2. *'Ilm* : Knowledge to enable him to make correct decisions and affect *ijtihad* (to pass judgement on points of law).
3. *Quraish* descent : *Quraish* being the tribe to which the Prophet belonged.

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[1] Abul Hassan Ali b. Muhammad b. Habib al-Mawardi (978-1058 A. D.)

[2] Al-Mawardi, *Ahkam as Sultaniya* p. 3 quoted from E.I. J. Rosenthal, *Political Thought in Medieval Islam* (Cambridge U.P. 1958) p. 28.

4. Physical Fitness : To discharge his duty in case of *Jihad* and in peace.
5. Mental Fitness : To discharge his duties as protector of the faith.
6. *Kifaya* : Competent discharge of duties of government and administration.
7. Courage and determination : To be able to protect the territory of Islam and wage *Jihad* against the infidel and the enemies of Islam.[1]

With the decline of the *Khilafa* the insubstantiality of the classical theory became apparent and the entire conception of the *Khilafa* needed reinterpretation. The gulf which separated the classical theory of *Khilafa* from the reality of Abbasid *Khilafa* dominated by the Saljuq Sultanate is manifest, most strikingly, in the writing of the *Shaf'i* theologian Abu Hamid al-Ghazali.[2] More than any writer on *Khilafa* his writings must be understood against the background of the political and religious controversies and struggle of the time.

His views on the theory and practice of *Khilafa* are contained in *Kitab al iqtisad fil-i'tiqad, Kitab al-Mustazhiri* and *Ihya-al'Ulum*. The first elaborates a theory of *Khilafa* as orthodox as the classical theory of al-Mawardi; the second work is tempered with willingness to make concessions to expediency; and in the final work he expresses the opinion that an attempt should be made to preserve the *Khilafa* as a symbol of unity of the Muslim *Umma*, by recognising the actual overlordship of the Saljuq Amirs.

Al-Ghazali considers *Khilafa* a necessity because it is of advantage and keeps discord away. His main purpose was to establish the legitimacy of the Abbasid *Khalifa* al-Mustazhir against the opposition of his rivals. Having demonstrated the necessity for the caliphate, Al-Ghazali enumerates the virtues

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[1] H.A.R. Gibb. "Mawardi's Theory of Khilafat", *Islamic Culture*, (July 1937), p. 35.

[2] This statement of al-Ghazali's ideas on *Khilafa* is based on:
(i) E.I.J. Rosenthal, *Political Thought in Medieval Islam*, op. cit. pp. 38-43.
(ii) L. Binder. "Al-Ghazaali's Theory of Islamic Government", *The Muslim World* (July 1955) pp. 299--341.

by which *Khilafa* must be distinguished in order to lead those entrusted to its care to the goal which *Shari'a* has set for man. Although the qualifications set down follow the same pattern as that adapted by al-Mawardi, they are modified to meet the political situations and the particular case of al-Mustazhir. Ability to wage *Jihad* is divided into prowess and courage (*najda wa shuja'a*). Faced with a weak *Khalifa*, al-Ghazali says that the force (Shawka) of the Saljuqs guarantees the *najda* required of the caliph. He wants to think of the Saljuq Sultans not as independent rulers but as loyal servants of the caliph.

He also disposes of the condition of *Kifaya* (the competent discharge of duties of government and administration) insisted upon by al-Mawardi. He says that this condition is fulfilled by the expert wazirs.

He treats *'ilm* in the same way and finds a defence for the *Khilafa* who lacks the power of *ijtihad* because of his ignorance of *Shari'a*. He says that if the *Khalifa* can lean on the Amirs for his strength, on his wazirs for competent discharge of administrative duties, why should he not depend on the learned for affecting *ijtihad*.[1]

In *Ihya al 'Ulum* he goes further. Here he introduces a new way of designating a *Khalifa* by recognizing in law an existing practice, the designation by the Amir who is in effective control and is the actual ruler. He justifies this through allegiance, by saying that as long as the authority of the *Khalifa* is thus recognised, the government is lawful. In other words, the Sultan is the man in control of affairs who owes allegiance to the *Khalifa* and grants him prerogatives; that is, he mentions the *Khalifa's* name in the address *(khutba)* during the Friday prayers, and mints coins bearing his name *(sikka)*.[2] Thus in trying to preserve *Khilafat* as an institution, al-Ghazali relegates it merely to a symbolic institution.

The next important interpretation of the Islamic Political Theory and the conceptual matters of Islamic State and *Khilafat* did not occur until the end of the fourteenth century. With the rise of the local overlords in Persia, north Africa and elsewhere, and the end of the Abbasid *Khulafa's* political power, orthodox political theory had undergone a grave crisis. Until this time the *Khilafa* and the Islamic government had been conterminous, although in the later period the connections had been mainly symbolic. The *'Ulama,* jurists, and statesmen all strove to establish a new basis of legitimacy. It was then that Ibn Khaldun[1] one of the most original of Muslim thinkers, presented his solution. Recognising the fact that the *Khalifa* no longer wielded effective political power, he rejected political unity but admitted the religious unity of the Muslim people. By doing so he justified the existence of principalities within the *Khilafa.* It is necessary to quote him at length.

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[1] H. K. Sherwani' *Studies in Muslim Political Thought and Administration* (Ashraf, Lahore, 3rd Ed., 1959) pp. 186 187.

[2] H.A.R Gibb, "Some Considerations on Sunni Theory of Caliphate" *Archives d'historie du driot Oriental* (Vol. III 1948) pp. 401-403.

"Kingship", he says, "is the natural end to which social solidarity leads. And this transformation is not a matter of choice but a necessary consequence of the natural order and disposition of things. For no laws, religions or institutions can be effective unless a cohesive group enforce and impose them, and without solidarity they cannot be established. Social solidarity is, therefore, indispensable if a nation is to play the role which God has chosen for it.

"For unless religious laws drive their sanctions from social solidarity they will remain totally inoperative.

"You see therefore how the Caliphate was transformed into monarchy. At first (i.e., after the immediate successors of Muhammad) the rulers behaved like spiritual leaders, in that they enforced the articles of Faith and for their part observed moral standards in their dealings. The only point of change was that the sanction on which they relied was no longer religion but coercion and social solidarity. This state of affairs continued to prevail until the time of Mu'awya, Marwan and his son 'Abd-al-Malik[2] and also under the first few Abbasid Caliphs, until the time of Harun-ar-Rashid and his sons. After that nothing remained of the Caliphate and spiritual rule but the name, the reality being an absolute kingly rule in which a spirit of domination was indulged in freely, for conquest and

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[1] Abdul Rahman ibn Muhammad ibn Khaldun al Hadrami (1332-1406)

[2] Mu'awiya (died A.D. 680) was the founder of the 'Omayyid dynasty; Marwan (died A.D. 685) and Abd al-Malik (died A.D. 605) were among his most distinguished successors.

under the successors of Al-Mu'tasim and Al-Mutawakkil.[1] These kings, however, retained the title of Caliph as long as they had to depend on the support of the Arabs.

"Thus in the two stages described above, Monarchy and Caliphate were intertwined. However, when the solidarity of the Arabs began to weaken, their number to fall off, and their power to decline, a further change took place. Absolute Monarchies grew up in the East,[2] under non-Arab rulers, who because of their religious sentiments recognised the authority and the titles of the Caliphs but who kept the substance of power for themselves.

"You have seen then, that in the first stage (of Muslim history) the Caliphate existed alone, without any Monarchy : later on Caliphate and monarchy were intertwined and intermixed: finally Monarchy stood out independently of the Caliphate, because it could lean on a power and solidarity distinct from that of the Caliphate."[3]

Ibn Khaldun spent most of his life in North Africa and thus the political theory he developed is based upon his study of the history of the North African tribes. His *Muqaddima* (Introduction) to the *Kitab-al-'Ibar* contains his theory of the rise and fall of political power. He puts forward the view that dynasties rise and fall in accordance with certain principles, and he traces five stages through which this process continues.

The reason for a tribe's rising and establishing *Mulk* (political power over a territory) is mainly its desire for that power. This, along with kinship, religion, and unity of purpose, brings out *'Asabiyya* (feeling of togetherness). *'Asabiyya* is at its greatest just before and when a political power is established by a tribe. That is the first stage. The second stage is when the power is consolidated, a system of taxes devised, and the power slips from tribal community into the hands of their leader. The third is the stage of the attainment of the peak, and when the intensity of the *'Asabiyya* begins to diminish. The fourth is the stage of general decline of power and a further decrease in

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[1] Al-Mutawakkil (822-61 A.D.) the son of Mu'tasim succeeded his brother *Al-Wathiq* as Caliph.

[2] *i.e.*, the Eastern half of the Arab world, North Africa being the Western half.

[3] Ibn-Khuldun, *Muqaddima* Vol. 1, p. 364, quoted from Charles Issawi (ed), *An Arab Philosophy of Ibn Khaldun of Tunis* (John Murray, London) pp. 137-139.

'Asabiyya. The final stage is that of the fall of the power when corruption has completely seeped into the administration. The tribe starts to be dissatisfied with its leaders and other tribes, gaining *'Asabiyya,* overthrow the existing power and the cycle begins again.

Ibn Khaldun thus recognises the fact that *Mulk* or political dominance, can legitimately exist within the *Khilafa* over certain parts. He also establishes that States based on *Mulk* are not completely divorced from religion, and puts forward the view that although religion is a determining factor in *Khilafa* it still plays an important part in the power State created through the dominance of a people over a territory. He states in Chapter III SS 23-31 of the *Muqaddima* that the Islamic community has no relation to the governmental organisation of its parts, and that this governmental organisation is subject to the natural phenomena in a way which is in turn not related to the teachings of the Prophet. The *Mulk,* to him, is an end in itself and is governed by the laws of causality. His main concern is the power state and thus we find in him both the traditional and the impirical. Starting from a traditional standpoint, apparent from his definition of *Khilafa,* he goes on to subject the parts of the Caliphate to the laws of causality. This accommodation of *Khilafat* to *Mulk* is also implicit in two findings of his:

(a) that the *Khilafa* has survived in the *Mulk* of Islamic power, and

(b) that religion is still an important factor in the *Mulk.*

He is thus combining the theological with the political concept of the State without abandoning the accepted Muslim position for he maintains that dominion is as necessary as the Will to Power, and that power can be established so long as *'Asabiyya* unites a large group of people who are like-minded. Religion is only one of the factors of *'Asabiyya,* others being kinship, unity of purpose, will to power etc. It is this combination of religious conviction with political power determining the purposes and needs of the *Khilafa* which Ibn Khaldun so clearly recognises. To him the transformation of the *Khilafa* into *Mulk* is natural and inevitable. However, he insists that Islam should play its part even in the *Mulk.* He believes that if it fails to do so, speedy decline of power becomes inevitable. He

makes such a reference in respect of limitations set by religion in the case of taxation. He says:

> "It should be that at the beginning of the dynasty, taxation yields a large revenue from small assessments. At the end of the dynasty, taxation yields a small revenue from large assessments. The reason for this is that when the dynasty follows the ways of religion, it imposes only such taxes as are stipulated by the religious law, such as charity taxes, the land tax and the poll tax. They mean small assessments, because as every one knows, the charity tax on property is low. The same applies to charity tax on grain and cattle, and also to the poll tax, the land tax and all other taxes required by the religious law. They have fixed limits which cannot be overstepped..."[1]

It is in this way that Islamic ethics underlie the whole of his system, although his emphasis, unlike the orthodox, is not on moral aspects but on stability and the overriding considerations of public welfare and interests of State. It is due mainly to these emphases that he has been compared with Machiavelli. As stated before, Ibn Khaldun attributes the rise of civilizations to *'Asabiyya.* After considering the more mundane elements of *'Asabiyya* Ibn Khaldun goes on to establish a relationship between *'Asabiyya* and religion by saying that religion is the basis from which vast empires spring, for where otherwise rivalry and discord might tend to disrupt the balance of solidarity, religion "unites the hearts, replaces the desires for the vanity of the world with its rejection and turns man to God, seeking right and truth in unison. This is because religious fervour can efface the competitiveness and envy felt by the members of the group towards each other and turn their faces towards the truth. Only by God's help in establishing His religion do individual desires come together to press their claims, and hearts become united. God said 'if you had expended all the treasures on earth, you would have achieved no unity among them.'[2]"[3]

Ibn Khaldun defines the *Khilafa* as the "ruling of the people according to the insight of the religious dictates in other-

[1] Ibn Khaldun, *Muqaddima* op. cit. Vol I, Chap II, Section 1-21.
[2] *Qur'an* 8:6
[3] *Muqaddima* op. cit., Vol. pp. 319-20

worldly matters as well as worldly matters derived from them. The Caliphate therefore, is the succession (by *Khalifa*) of the lawgiver as guardian of religion and as director of worldly affairs in the light of the religion."[1]

Ibn Khaldun also suggests that more than one *Khalifa* could exist at the same time to administer the world in different parts of God's earth. Although theoretically this may seem to be an innovation, it is really an acceptance of history in that at the time two Caliphs existed. He also suggested that it is no longer necessary for the *Khalifa* to be of Quraish descent. He asserted that in earlier Islamic times it was necessary because only the Quraish seemed to have had the knowledge and wisdom to run the affairs of God.

As might have been expected, four of the concepts of Ibn-Khaldun did not find acceptance with the Muslim traditionalists. Firstly he had emphasised the rise and fall of dynasties as an essential process of history; secondly he believed the group-minded State to be the natural result of association; thirdly, he stated that two *Khilafas* could legitimately exist at the same time; and fourthly he considered force to be the prime contributor to the establishment of *Mulk* (domination). A principle which justified the petty dynasties as the legitimate successors to the Abbasid *Khilafa* was not acceptable; and so from this period onwards the orthodox school continued to refute the views of Ibn Khaldun although the existing political conditions did not allow an alternative acceptable theory.

Under the Ottomans the *Khalifa* seems to have had a new significance in that the title no longer implied descent from the house of *'Abbas* or any claim to belong to the tribe of the *Quraish*. "The Muslim monarch now claimed to derive his authority from God, to be vicegerent of Allah, not a mere successor to the Prophet."[2]

The title of the Caliph also passed in this period from the supreme authority who used to nominate Sultans to any Sultan who cared to assume the title. During the sixteenth and seventeenth centuries the only *Sunni* monarchs who could rival the Ottoman Sultans in wealth and extent of territory were the

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[1] Ibn Khaldun, Issawi, op. cit., p. 136
F. Rosenthal (op. cit) Vol I, Ch. III, see section 29 for detailed discussion on the Nature of *Khilafa*.

[2] T. W. Arnold. *The Caliphate* (Routledge and Kegan Paul, London 1965). P. 129.

Mughals in India. They assumed the title *Khalifa* and from Akbar's reign they called their capital *dar-ul-Khilafa* (the abode of the Caliphate). Akbar's coins bear the inscription "The great Sultan, the exalted *Khalifa*.

ISLAM IN MODERN HISTORY

Islamic thought of the 18th and the 19th centuries is dominated by the awareness that something has gone wrong in the life of the Muslim community. This was the era when for the first time in Muslim history, the glory that the Muslim had achieved was slowly beginning to fade. Muslims attributed their decline to the fact that they had loosened their grip on Islam. The fundamental problem for Islam since then has been to rehabilitate history and to set it developing again in the right direction, so that the Islamic society may once again flourish and achieve its lost glory. There have been three movements in modern Islam which have left a lasting effect on it. Although their influences are extremely complicated, their colouring can be seen in almost all Islamic movements which have since sprung up. These were the movements led by 'Abd-al-Wahhab in central Arabia, Shah Waliullah in India, and al-Afghani's crusade over the greater part of the Muslim world. We shall consider each in turn.

(a) The Wahhabiyya Movement:

All Islamic movements in the modern age have been protests against the deterioration which affected the Muslim world. One of the earliest and most influential among these was the Wahhabiyya movement in the eighteenth century. It was known after its founder 'Abd-al-Wahhab (1703-1787) of the Hanbali order.

This was a vigorous puritanical movement, and the message it brought was simple and straight-forward. Its theme was a return to the classic Islamic Law, rejecting all the philosophical, theological and mystical traditions which had found their way into Islamic framework during the Middle Ages. The Wahhabiyya insisted solely on Law, and classical Law to them was real essence of Islam. "Islam", Muhammad bin 'Abd-al-Wahhab proclaimed, "is not a mere matter of interpretation and blind following of what others have said. On the day of Judgement it will not be enough to plead: I heard people saying something and I said it too."[1] We must find out what true Islam is. It is above all a rejection of all gods except God, a refusal to allow others to share in that worship which is due to God alone, *Shirk* is evil, no matter what the object of worship, whether it be "King or Prophet, Saint or Tree or Tomb."[2]

'Abd-al-Wahhab took as his model, the first generation of Islam and repudiated all the later changes admitting into Islam, 'other gods than God'. He was in vehement opposition to the *Sufis* and believed that they had corrupted Islam by making it a personal affair. The Wahhabiyya did not remain a theoretical movement but became a practical one. The movement had found in Ibn Saʿud (died 1765) a prince who was willing to let these principles find a practical manifestation. The movement grew up in central Arabia in geographical remoteness which enabled it to survive even in spite of having repudiated the Ottoman legitimacy and power. Thus it was that its leaders began to re-establish Islam from the very place where the early Muslims had founded it. Their influence on modern Islam has been considerable. It is from the thought pattern of this movement that the voice of "back to *Qur'an*" and "back to *Sunnah*" has come through to our own age.

(b) **Shah Waliullah :**

The penetrating voice of the Wahhabis had been influential among the Muslims who found themselves perplexed by the inadequacies of their community in the modern world. Like the Wahhabis, other men also thought of denouncing existing ideas and reconstructing what Islam originally taught and inspired. One such man was Shah Waliullah of Delhi (1703-1781). Although Shah Waliullah was a contemporary of 'Abd-al-Wahhab and was also educated in Mecca, there seems to be little evidence of mutual influence. Waliullah rejected what had come into Islam during medieval times, although not to such extremes as did Wahhab. The reason for this may have been that former grew up among the crumbling Muslim Empire of the Mughals and therefore, it was easier for him to reform and correct than to repudiate. He did not follow any particular

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[1] Quoted from "*Majmu'at al-rasai'l wal masa'il al najdiyya*" Cairo (1344-9 A.H.) 1925-6-193 (4 Vol. i. 3. Albert Hourani *Arabic Thought in the Liberal Age* (Oxford U.P. London, 1962) p. 37.

[2] Albert Hourani, op. cit. p. 37.

school of law but sought to embrace the best of all in a system of his own. His rejection or acceptance of any particular attitude is based independently on his own principles of judgement. It is particularly due to his creation of a new system of Law that Maulana Maududi has called him a 'Mujaddid.[1]

"An idea has brought itself to my mind," says Waliullah, "that the *Madhhab* of Abu Hanifa and Shafʿi are the most well known among the *Umma*......the tenets of both these schools should be amalgamated together in the light of the sayings of the Prophet and a new system should be wrought out of the two. Whatever finds support from the *Hadith* should be retained and whatever does not, should be discarded."[2]

Waliullah was a staunch supporter of purified *Khilafa* in its very early Meccan sense. He differentiates between *Jahaliyyah* (ignorance) and true Islamic *Umma*. This subject is discussed at considerable length in both *Hujjatullah-al-Baligha* and *'Idalat-al-Kafa*. In the latter work he attempts to reject *Mulk* in Islam and gives the *Khilafa* a purely classical interpretation like that of Mawardi.

On the other hand, what seems to be difficult to correlate with his purely classical interpretation of the *Umma* is the fact that politically his ambition was to use the Muslim power in India restored on the Mughal pattern. He held that if Muslims are once again to be great, pure Islam must be restored. In a letter to Ahmad Shah Abdali the Afghan Amir, he wrote: "......in short the Muslim community is in a condition thoroughly pitiable. All control of power is with the Hindus because they are the only people who are industrious and adaptable. Riches and prosperity are theirs, while Muslims have nothing but poverty and misery. At this juncture, you are the only person who has the initiative, the foresight, power and capability to defeat the enemy and free the Muslims from the clutches of the infidels. God forbid if their domination continues, Muslims will even forget Islam and become undistinguishable from the non-Muslims."[3]

It was not until after his death that his ideas came to be organised in a socio-political movement under Shah Abdul Aziz, and later under Shah Isma'il and his close friend Ahmad Shah Barailvi. By the beginning of the 19th century, the Mughal power in India had declined considerably. In the East in Bengal, the British were busy consolidating their power. In the South and West the Hindus had revived their ascendancy; and the Sikhs had since come into power in the Punjab and the North West. It was during these crucial years that a group led by Ahmad Shah Barailvi and Shah Isma'il made some initial inroads on the Sikh power. Many Muslims answered their call to re-establish the Muslim power in India, but their numbers was small. Less than 150 miles from Peshawar, where he had been proclaimed a *Khalifa* a year earlier, Ahmad Shah Baralvi and the handful of his followers were massacred.[1]

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[1] From *Tajdid* (to renew); *Mujaddid* he who affects renewal.

[2] Shah Waliullah, *Al Tafhimat al-alahiyya*, (Maktaba-i-Jamiʿa, Delhi n.d.) p. 211

[3] Khaliq Ahmad Nizami (ed) *Shah Waliullah Kay Maktubat* (Aligarh 1951) p. 106.

Shah Waliullah subjected all the Muslim medieval theories and their developments to severe examination in the light of the *Qur'an* and the *Hadith*. He has left an indelible mark on subsequent Muslim thought in India, although the liberal movements in Egypt and Turkey may not have been in his spirit. The Romanticism among the Indian Muslims in fact partly springs from him, and Abul Kalam Azad, Muhammad Iqbal and Abul A'la Maududi are in fact carrying on his tradition with slight re-adjustments. The nostalgic appeal to fundamentalism was also directly or indirectly under his influence.

(c) Jamaluddin Afghani :

The next important change in Muslim political theory did not occur until quite recently, and the change took place primarily under the political influence of the Occident. The Eastern Crisis, 1875-8, showed that the armies of a European Power could make a deep penetration into the heart of the Ottoman Empire, the then symbol of Islamic Unity, and could be checked only by the threat of another power. The treaty of Berlin, which ended the crisis, taught a very important lesson, tantamount to a grave doubt that the Empire and its provinces now no longer held their fate in their own hands. The occupation of Tunis by France (1881) and of Egypt by Britain (1882) pointed the same moral, and it was from this

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[1] See Ghulam Rasul Mehr, "*Sayyid Ahmad Shah Barailvi, Yani Mujahid-i-Kabir Hazrat Sayyid Ahmad Shah Barailvi ki Mufassal Swanih Hayat aur un ki Twarikh-i-Ihya-i-din ki Mukammal Sar Guzasht.* Urdu (Lahore Vol. 2, n.d. 1953) pp. 120-125.

time onwards that important changes began to take place in Islamic political theory.[1]

The nineteenth century as a whole had presented a ghastly spectacle for the Muslim world. Wherever the Muslims lived, they were being subjected to Western dominance. Algeria was captured by the French; Russia annexed Transoxiana: India had finally gone into the hands of the British after the failure of the War of Independence; and the Crimean War had rendered the Turkish Power hollow.

At such a juncture, voices of co-ordination began to be heard in the form of Pan-Islamism, which had found its real seeds in the political situations. For the Muslim, whether he was an Indian, a Turk or an Arab, the seizure of power by the West meant that the community was in danger. The *Umma* was among other things a political community expressing itself in all forms of political life, and Muslims began to realize that a community which has no power may even cease to exist. The problem of decay from within was no doubt primary in men's minds, but now there also existed the other problem, that of survival, and the basic question was how complete annihilation from outside could be resisted.

It was during these historically precarious years for the world of Islam that Jamaluddin Afghani's[2] crusade for political unity of the Muslims began. Afghani was basically a man of action and left very little of the written word behind.

Afghani's only systematic work, *Al-Radd ala al-Dahriyin* (Refutation of the Materialists) deals primarily with philosophical, theological and ethical issues, but his tremendous influence must be sought in what he did and said rather than in what he wrote.

The main feature of his doctrine was first and foremost that he was the founder of the Pan-Islamic movement, combining a nationalist—interpretation of Islam with modernism and reformism. His principal political aim, to quote the words of his disciple Muhammad 'Abduh, was "to achieve the regeneration and strengthening of one of the Islamic States so that it may reach the level of the great Powers and thereby restore Islam to its past glory."[1]

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[1] Albert Hourani, *Arabic Thought in the Liberal Age*, 1798-1839. Oxford U.P.

[2] Jamaluddin al Afghani (1838-97). Although he lived a stormy public life, his origins are wrapped in mystery. He himself claimed to be from Afghanistan but there is circumstantial evidence that he was born in Mazandaran in Persia. For a detailed dicussion of his life, see Brown, E. G., *The Persian Revolution* Cambridge, 1910, Lutfullah Khan, *Mirza Jamaluddin Asadabadi* (Pres Udh) and Hourani, op. cit, pp. 103-130 and Abul Kalam Azad, *Tarikhi Shakhsiyyatain*, pp. 13-23.

It is also possible to form a clear idea of his teachings from the articles he contributed to *Al Urwa al-wathqa,* a political journal he published from Paris in collaboration with Muhammad 'Abduh. In these writings he describes the basic cause of the Muslim degeneration in the face of Europe as the indifference which had grown among them in respect of Islam. But he ascribes the greatness of the West and the inferior political stature of the Muslim world to religious reasons. He says that the West grew politically strong because Christians neglected their religion and followed pagan beliefs and virtues; the Muslim peoples grew weaker because the truth of Islam was corrupted by falsity. Christians are strong because they are not really Christian; Muslims are weak because they are not really Muslims. When the Muslims followed the tenets taught by the Prophet, the *Umma* was great in the worldly sense, and the glories of this greatness faded away when they began to betray these truths.[2]

Afghani spent the whole of his active life moving from country to country in the Muslim world. His efforts to bring the whole of the Islamic East into one active force, and especially to unite the *Shi'a* Persia with the *Sunni* othodox Muslim world, probably brought an invitation from the *Khalifa* in Turkey. There he spent his last years as a virtual prisoner, after disagreements began to appear between him and the *Khalifa.*

The greater part of his life had been spent in the defence of the Islamic countries, and even when he dealt with the purely religious preaching his purpose was political. He was of the view that political factions and dynasties should not be allowed to stand in the way of unity and that the Muslim rulers should co-operate in the service of Islam. He did not

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[1] Quoted from Hakem Zaki Naseibeh, *Ideas of Arab Nationalism* (Cornell University Press, New York 1959) pp. 120-121.

[2] Hourani, op. cit., p. 129

think it necessary to impose the rule of one monarch upon the rest, and that explains his attitude towards *Khilafa* as well, although he believed in the supremacy of the *Umma* in both the political and the religious sense. For him the institution of the *Khilafa* existed only for a symbolic and not for a political purpose. In no way did he intend that the *Khilafa* should make the other monarchs subservient to itself politically, and in fact, in a way, his was a nationalistic movement whereby all the Muslim nations, after consolidating their own nationality, would transcend nationalism, contributing to the force of the *Umma.*[1]

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[1] In India in 1879. Stayed in Calcutta and Hyderabad, Abul Kalam Azad claims that during this period his influence was negligible except on one Abdul Ghafoor Shahbaz, who translated some of his Persian articles into Urdu. See Abul Kalam Azad, *Tarikhi Shakhsiyatain,* op. cit., p. 22.

CHAPTER II

MAUDUDI—THE FORMATIVE YEARS

(i) Early Life and Work

Sayyid Abul A'la Maududi was born in Aurangabad (Daccan). He was the youngest of three brothers. His father, Sayyid Ahmad Hasan, was a lawyer, who abandoned his legal practice, apparently because of the realization that he was earning his living in an un-Islamic way. Sayyid Ahmad Hasan, according to Abul A'la's own statement was born in 1857 in Delhi, and his early education was conducted at the Aligarh School of Sir Sayyid Ahmad Khan.[1] Sir Sayyid's School had been established at Aligarh in the U.P. for the specific purpose of imparting Western liberal and scientific education to the Muslims of India, with some emphasis on religious education. It was part of Sir Sayyid's endeavour to impart Western knowledge to young Indian Muslims without effecting the estrangement from the religion of Islam which had been apparent in those who graduated from other government or missionary institutions created by the British. Sayyid Ahmad Hassan was, however, recalled home by his father (Abul A'la's grandfather) when a friend of his visited Aligarh and on his return reported: "Dear brother : Wash your hands of Ahmad Hassan. I saw him in Aligarh, dressed in infiidel shirt. He was playing with a stick and a ball."[2] This episode had a lasting influence of Abul A'la's life. If his father had not been called back from Aligarh, he would never have refused to send him to a Westernized school and Abul A'la's early traditional Muslim education would not have made him what he is.

Maulana Maududi gives his date of birth as Rajab 3, 1321 A.H. (September 2, 1903) and attributes his birth to mysterious circumstances saying that three years before his birth, a pious *Darwaish* (a saintly person) called on his father to foretell the birth of a very great man in his family and suggested the name

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[1] Maududi, "Khud Nawisht" (an autobiographical article) reproduced in Muhammad Yusuf. (ed) *Maulana Maududi Apni aur Dusron ki Nazar Main* (Maktaba-al-Habib, Lahore, 1955) p. 34.

[2] ibid p. 35

Abul Aʻla.[1] It was one year after his birth that his father abandoned his legal practice and went to an ancient town, Arab Sarai near the shrine of Nizam-ud-din Auliya, a religious potentate of the Middle Ages, to spend his life in religious meditation. He continued this monastic life for three years but then came back to his family which he had abandoned to penury. Abul Aʻla speaks of his father with reverence[2] and there is a tone of complete approval in his writing of his action. He certainly admires this patriarch for his dissatisfaction with Western values and approves his decision to abandon the use of Western clothes.[3]

After attending Madrassa Furqaniya, a religious institution at Aurangabad, for a few years, Abul Aʻla took 'Maulavi' matriculation in Religious Knowledge. Later, his father's failing health took the family to Hyderabad. This opened new opportunities for education, and he joined the Dar-ul-ʻUlum for further religious instruction. This, however, he could not complete because of his father's further illness. On the death of his father, he drifted into journalism with his brother who took up an appointment as the Editor of 'Madina' at Bijnor in 1918. This was the time of the beginnings of the national movement in India, and he writes that because of his hatred for British sovereignty and influence he began to take part in politics and play an active role in the activities of the *Anjuman-i-Ta ʻanat-i-Nazar Bandan-i-Islam* (Society of the Sympathisers of the Prisoners in the Path of Islam). When the *Khilafat* Movement came closer to Mr. Gandhi's movement of passive resistance *(Satyagarh)*, after the latter joined the *Khilafat* Movement in order to win the goodwill of the Indian Muslims, Abul Aʻla actively participated in the *Khilafat* Movement and also wrote his first book, which was about Mr. Gandhi's personality and work. This was confiscated by the Government before publication.[4] Soon afterwards Maulavi Taj-ud-Din, on whose paper 'Weekly Taj' Maududi had worked for a few months earlier, invited him to become the editor of the paper. In 1920, he went to Jabalpur and soon was successful in transforming it into a

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[1] Muhammad Yusaf, op. cit, p. 38.

[2] ibid p. 35

[3] ibid p. 34

[4] ibid p. 43

daily. The paper supported the cause of the *Khilafat* Movement and was instrumental locally in gathering extensive support for the Indian National Congress.[1] 'Taj' was soon closed when one of Maududi's articles was found politically objectionable by the Government. This brought Maududi back to Delhi where he met the leaders of the *Jamiʻat-ul-ʻUlama-i Hind*[2] for the first time. Maulana Mufti Kifayat Ullah and Maulana Ahmad Saʻud invited him to edit 'Muslim', the official paper of the *Jamiʻat*. This he edited from the early months of 1921 to 1923 when the life of the paper came to an end. With this his political and journalistic activities ceased for a year, which period he spent in the State of Bhopal, apparently confining himself to studying the English Language.

In 1924, another of his most important choices came when he accepted the editorship of *'al Jamiʻat'*, another paper of the *Jamiʻat-ul-ʻUlama-i-Hind'*, rather than work on Maulana Muhammad ʻAli's *'Hamdard'*. It is here that we see in him a preference for religious writing rather than political journalism. The chances were that the alternative choice would have led him into politics rather than religion. According to Maududi's own statement, his association with *'al-Jamiʻa'* continued until the close of 1928[3] although according to another source the break occurred in 1927.[4] It was during the editorship of the *'al-Jamiʻa'* that a great change took place in him as a result of an incident which happened during 1926.[5] Communal disturbances followed the failure of Passive Resistance and the *Khilafat* Movement. One Swami Shardhanand, leader of the *Shudhi* (an extremist Hindu revivalist movement) was assassinated by a Muslim. The latter's plea in the court was that he had killed this infidel for the purpose of securing God's pleasure and that it was a religious duty of all Muslims to terminate the life of non-believers. A political and religious controversy followed and Mr. Gandhi claimed that "Islam has shown itself as a movement of which the decisive force has been the sword and is the sword".[1] Maududi answered this accusation by a series of articles on Islam's attitude to war, published as a book *al-Jihad fil-Islam* in 1927.

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[1] Muhammad Yusaf, op. cit.,pp. 44-45

[2] *Jamiʻat-ul'-ʻUlama-i-Hind* ('Ulama's Association of India). Full note on the *Jamiʻat* later in this chapter.

[3] *Maududi, Apni aur Dusron ki Nazar Main*, op. cit, p. 48

[4] Mahir-ul-Qadri "Chand Naqush-i-Zindagi" an article reproduced by Muhammad Yusaf (ed) *Maulana Maududi Apni aur Dusron ki Nazar Main*, op. cit. p. 343

[5] Maududi, *Al-Jihad fil-Islam*, (Islamic Publication Lahore, 1962) pp. 9-13.

From this time on, Maududi seems to have devoted himself to a deeper study of Islamic theology. This is clear from two things: first that he left his assistant editorship of *'al-Jami'a'* and spent two years in Aurangabad his birthplace; and second that the pursuit of journalism as a means of livelihood for him seems to end here, although he did come to Hyderabad in 1936 to edit *Tarjuman-ul-Qur'an* the religious monthly most closely connected with his name. He took this over from Abu Muslih, who had been his predecessor for seven months. It is, however, interesting to note that according to one source Maulana Maududi did not have a beard in 1934, and therefore until his editorship of the *Tarjuman-ul Qur'an* his future as a theologian may not have been very clear to himself. However, he had already gained a wide reputation as a theologian with the publication of *Risala-i-Diniyat* (A Book of Theology), which he had originally written in Urdu at the request of the government of the Nizam of Hyderabad. This was translated into English in 1932 and published under the title *Towards Understanding Islam.* This book has since been translated into Arabic and was circulated, along with other of Maududi's works, by the Muslim Brotherhood of Egypt.[2] As a result of this and *Jihad fil-Islam,* Maududi sprang into prominence as one of the leading theologians in India.

It was during this period that the writings of Maulana Maududi are said to have attracted the attention of Dr. Muhammad Iqbal who is said to have invited Maududi[3] to make the Punjab the base of his activities. In 1937, he suggested that Maududi should move to a certain *Waqf* (religious endowment) at Pathankot. The *Waqf* consisted of sixty-five acres of

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[1] Maududi, *Al-Jihad fi l-Islam*, op. cit., p. 12.

[2] L. Binder, *Religion and Politics in Pakistan* (University of California, Berkeley, 1965) p. 82

[3] Although most of the other authorities have agreed with this and have said that this invitation came from Dr. Ibqal, I have not found reference to it in the writings of Maulana Maududi. Muhammad Sarwar, *Maulana Maudaudi ki Tahrik-i-Islami* (Urdu) (Sindh Sagar Academy, Lahore, 1956) p. 53, expressed doubts as to the authenticity of this invitation.

land and included a printing press and a mosque. The career of Maududi as a religious leader really began at Pathankot where much of his earlier liberalism disappeared. His opponents delight in pointing out that it was at this stage that Maududi began to grow a beard.[1] He had moved to Pathankot in January 1938, to establish the Dar-ul-Salam Academy, but Iqbal died in April 1938, and so in December Maududi moved to Lahore to teach *Islamiyat* at the Islamia College, Lahore, while still maintaining close connection with the *Waqf*. Khalid bin Sayeed in his admirable article on the "Jama'at-i-Islami Movement" attributes to him in his new position the glorified name of Dean of the Faculty of Theology.[2] The facts are that during this time he was the only teacher of *Islamiyat* at the College, and secondly that the teaching consisted of only a very uncontroversial curriculum set down by the University of the Panjab, dealing with the basic principles of Islam and teaching the students Islamiyat as an optional subject for their first degree, with no facilities for research etc.

After one year of teaching at Lahore, Maududi moved back to Dar-ul-Salam Academy at Pathankot and subsequently founded the Jama'at-i-Islami. From then onwards his story and that of the organization are the same.[3] The *Jama'at* was launched on the lines of the *Ikhwan-ul-Muslimun.* (The Muslim Brotherhood) of Egypt, and in conformity with the concept of *Hizbullah* (Party of God) found in the early writings of Abul Kalam Azad. Along with this there was retained the extra-territorial concept of Muslim Nationalism which Maududi had acquired during his affiliation with the *Jami'at-ul-'Ulama'-i-Hind,* and which had taken shape and hardened during the *Khilafat* Movement. Also retained was the idea of *Millat* propagated by Iqbal in his poetic and prose works. It is to the more detailed examination of these formative influences that we must now turn. These will explain the principles underlying the inception of the party.

(ii) Twentieth Century Thought

(a) Ikhwan-ul-Muslimun.

The influence of the *Ikhwan-ul-Muslimun* of Egypt on

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[1] See Freeland Abbott "The Jama'at-i-Islami of Pakistan" *The Middle East Journal*, (Washington 11:37-51, 1957) p. 38

[2] Khalid bin Sayeed "Jama'at-i-Islami Movement in Pakistan", *Pacific Affairs*, (Vol. 30, 57-68 1957) p. 61.

[3] ibid p. 89.

Maududi appears most clearly in the way he founded and organized the Jama'at-i-Islami. We find many parallels between the two parties. Both parties had been translating the literature of the other into their own respective languages and had been distributing these works widely. The *Ikhwan* was established at Ismailiya by Sheikh Hasan al-Banna in 1928, but it was not until the late thirties that its programme developed.[1] In 1938, the Shaikh delivered an important lecture on the politics and involved purposes in the establishment of the *Ikhwan*. This lecture was translated into Urdu by the Jama'at-i-Islami and has continued to be distributed by them in the form of a small tract. It is important for the purpose of seeing the parallel between these two organizations to quote at length from this and from the lecture delivered by Maudui at the initiation of the Jama'at-i-Islami.

In the beginning of his lecture, Shaikh Hasan al-Banna mentioned that a few of his friends and he had come together to form this organization. He said, "This was the firm ideal on which we had all agreed, that each one of us will strive towards our goal, of redirecting public opinion as a whole towards the right Islamic viewpoint." He continued, "The foundation, the thought and the goal are Islamic and they are Islamic only. The organization does not have a single iota in common with non-Islam."[2] Similar words can be traced to Maulana Maududi, who at the time of the establishment of the *Jama'at-i-Islami* said; "We have stood for the real Islam and only for Islam, and our movement is to include the whole of Islam."[3]

Maulana Maududi also spoke at length about the Islamic religion and gave out in the same way as had Sheikh Hasan al-Banna that Islam is a comprehensive religion which takes all aspects of man's life on earth and hereafter, into its ken. Maududi said, "Islam is for all humanity, and all those things which are in any way related to man are connected with Islam, so that the Islamic Movement is a movement which is all-embracing...it has to change the whole pattern of living; it has to change the politics, ethics, economics and the civilization of

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[1] See Werner Caskel in Von Grunebaum, ed. *Unity and Variety in Muslim Civilization* (Chicago: U. P., 1955) p. 345.

[2] *Mukhtasar Tarikh-i-Ikhwan-al Muslimun* (Jama'at-i-Islami, Lahore, n.d.) pp. 1-2.

[3] *Tarjuman-ul-Qur'an*, September 1941, p. 5.

the world. We are following the correct religion which was established by the Prophet of Allah (peace be upon him and his followers)".[1] In the lecture mentioned above, Hasan al-Banna strikes the same note: "Islam", he says, "is a complete religion which has in its purview the solution of all problems of man for every age...it is our belief that the tenets of Islam are related to both this world and the world hereafter...the truth is that Islam is a belief, as well as a prayer, it is nationality as well as race, it is *din* (religion) as well as State, it is spiritual as well as mundane."[2]

To achieve their goal in the establishment of what they call the true Islamic State, both these religious parties have adopted similar methods on coming down to the level of mundane politics. They have both taken part in the elections of their respective countries, and both are striving to gain political power.

Although not too much emphasis should be put upon the similarities between statements of Hasan al-Banna and of Maulana Maududi at the times of the establishment of their respective parties and of their subsequent adoption of similar policies, the influence of Ikhwan-al-Muslimun upon Maududi's thought is evident.

(b) Muslim "Romantics"

(1) Altaf Hussain Hali

Although Maududi's movement is basically fundamentalist, it has assimiliated the 'romantic' principles to a great extent, and artistic and imaginative expressions have contributed much to his attitude. We noted Jamal-ud-din Afghani evoking in his rhetoric that potent nostalgia, the dream of ancient glory. This trait has been much developed in the Muslim world since his day. In India, a most eloquent instance is the superbly moving lament of the Poet Altaf Hussain Hali. Written in 1886, *Mad-o-Jazar-i-Islam* (The Ebb and Flow of Islam), popularly known as the *Musaddas* (six line stanzas), brilliantly recalls the lost glory of Islam. This is by far the most characteristic and influential literary product of nineteenth century Muslim India. He evokes the Muslim's triumphant past and recites the glory of Islam with illustrations of names drawn from the early Arabic period.

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[1] *Turjuman ul Qur'an*, Sept. 1941 p. 5

[2] *Mukhtasar Tarikh-i-Ikhwan-al-Muslimun* op. cit, p. 3.

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[1] *Turjuman ul Qur'an*, Sept. 1941 p. 5

[2] *Mukhtasar Tarikh-i-Ikhwan-al-Muslimun* op. cit, p. 3.

He then traces the downward trend in Islam's fortunes and its ultimate nadir in the fall of Baghdad. He feels that his *Umma* is still unable to escape from this malaise. His purpose in writing this long poem was to stir Muslims to a recognition of their plight for which they themselves were responsible. Although his main call is towards abandonment of fatalism, the 'Romantic' in him is found in the fact that no reference is made to contemporary problems and that the work seems steeped in a vague nostalgia. We may contrast Maududi's realism with Hali's romanticism, but at the same time must notice Maududi's appreciation of Islam at its best, and observe the connection between him and Hali in this.

(2) Abul Kalam Azad

This same "Romanticism" is also strongly evident in the early writings of Abul Kalam Azad who was probably the greatest influence upon Maududi's founding of the *Jamaʿat-i-Islami.* He also provided the theoretical foundation for the *Khilafat* Movement in India.

Maulana Azad's forefathers came to India from Herat (Afghanistan) in Babar's days. It is said that Maulana Azad's father, Maulana Khairuddin migrated to Mecca after 1857. Azad was born in 1888. A year later the family moved to Calcutta and settled there. Azad's father, like many other 'Ulama of his time, refused to give his son a Western education. Azad was a precocious child who mastered Islamic lore when he was still in his teens. He wrote a critical review of *Hayat-i-Jawaid* by Altaf Hussain Hali, which attracted wide attention. A story is told that when Maulana Azad was invited to address the annual session of the Anjuman-i-Himayat-i-Islam at Lahore, Hali took him as the son of Maulana Azad due to his youth. He was utterly astonished when he learnt that the critic of *Hayat-i-Jawaid* was still a young boy.

Azad entered into the political field very early in life and concerned himself with ameliorating the status of the Indian Muslims. He was stimulated with the writings of Sir Sayyid Ahmad Khan even though he felt that the policies of Sir Sayyid had become out-moded.[1]

For propagating his political views, he started the publication of *Al-Hilal* on 1st June 1912. Setting down the aims and

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[1] Abul Kalam Azad ,*India Wins Freedom* ,op. cit. p. 3.

objectives of this paper, he stated in the very first issue: "The real purpose of *Al-Hilal* is none other than the single idea that it should, in view of the beliefs and practices of the Muslims, extend an invitation to Islam and tell the adherents of this religion to give serious consideration to the book *(Qur'an)* of God and the *Sunna* of the Prophet. *Al-Hilal* wants to see Muslims follow their religion whether they are seeking solutions to educational, social or political problems."[1]

It is interesting to note the development of Maulana Azad's political views from 1912 to 1920. A Muslim correspondent asked Azad to clarify the policy of his paper. He wrote that there were three paths of action for the Indian Muslims to follow, namely: "(a) the path that Sir Sayyid Ahmad Khan took, that of proving to the British that Islam is not inherently anti-Christian and therefore, the Muslims are not anti-British; (b) the path of non-extremist Hindus (the Congress) who are striving for political rights; and (c) the path of the Indian extremists and anarchist Hindus who want to free mother India from foreign domination by sabotage and revolution".[2]

In the September 8, 1912, issue Azad tried to state his policy in the light of these questions. He indicated that it was doubtful whether he could separate religion from politics because he had formulated his political views in the light of religion. "According to our belief", he wrote, "any ideas not derived from the Qur'an, are tantamount to sheer infidelity and political views are not an exception to this rule. He asserted that Islam brought about a comprehensive social order for mankind and there was not a single social problem for which Islam did not provide a solution." In the light of these arguments, he stressed the need for following a path which did not appear among the three denoted by the correspondent. "These three paths have appeared before now but the path towards which I am pointing is the one through which thousands have already reached their goal. We have nothing to do with the three alternatives you have suggested; as we give an *Invitation to the path of Allah*. This is the path denoted by Allah by the phrase *Sirat-al-Mustagim*[3] (the straight path)."

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[1] *Subh-i-Ummid*, Vol. I (a collection of articles from *Al Hilal*) (Urdu) (Sangam Kitab Ghar, Delhi, Feb. 1959). p. 39.

[2] *Al Hilal*, September 8, 1912.

[3] The reference here is made to the opening *sura* of the Qur'an where the path of God is referred to as, *Sirat-ul Mustaqim*.

He further explained that Muslims have not examined Islam at its zenith and if they did so they would not be bowing their heads in subjugation to the Hindus.[1]

In discussing the policies of the political groups such as the Indian National Congress on the one hand and the Hindu anarchists on the other—Azad stated that he did not follow either of them. He declared, "Islam is an exhalted religion to such an extent that it does not become the Muslims to follow the policies formulated by the Hindus. There cannot be a greater shame for the Muslims to bow before others for political education. Muslims need not join any political party. They were the leaders of the world. If they would submit to God, the whole world would submit to them.[2]

Abul Kalam's early writings *vis-a-vis Al-Hilal* had two important undercurrents. Firstly *Al-Hilal* did not trust the British government and secondly, it propagated non-cooperation with the Hindus. As far its political aims, *Al-Hilal* asserted time and again that it is feasible for the Hindus to endeavour to revive their self-awareness and national consciousness on the basis of secular nationalism but, for the Muslims, this is indeed not possible. Their nationality is not inspired by racial and geographical exclusivity; it transcends all man-made barriers. Therefore, unless they are inspired by Islam, the spirit of self-awareness will not be gained by the Muslims. "Europe may be inspired by conceptual matters related to 'homeland' and 'nation', but the Muslims can only seek inspiration from God and Islam".[3]

Azad believed that the fundamental nature of Islam required that all Muslims of the world are an integral part of the Islamic *Umma* and that all Muslims must remain united in an organic whole and that any one who betrays the solidarity of Islam is led astray[4] From this basis Azad derives and acknowledges the authority of the *Khalifa* as an instrument through which Islamic solidarity is maintained. Therefore, he stressed that the obedience to *Khalifa* is mandatory. The *Qur'an* makes it incumbent upon the Muslims to obey three kinds of powers.

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[1] Abul Kalam Azad, *Mazamin-i-Abul Kalam Azad,* (Hindustani Pub. House, Delhi) pp. 25-26.

[2] ibid. p. 19.

[3] ibid. p. 87.

[4] Abul Kalam Azad, *Mas'ala-i-Khilafat,* (Maktaba-i-Ahbab-i-Wasanpura, Lahore, n.d.,) pp. 22, 25.

God, the Prophet and "those charged with authority" among Muslims. He believes that the last of these refers to the *Khalifa,* who is responsible for enforcing the *Shari'a.* To support this, he refers to a *Hadith* in which the Prophet is quoted to have said, 'whosoever obeys my *Amir*, obeys me'[1] Furthermore, he points out that the *Khalifa* must be elected by all Muslims. Like *Ibn Khaldun* he believes that no individual or family has an exclusive right to this office. He asserted, however, that if a person has consolidated his position in this office without election even then it is obligatory for all Muslims to bow their heads in submission before him.

He submits the history of the development of the office of the *Khalifa* to scrutiny to establish the legitimacy of the Ottomans as the *Khalifas* and asserts that the Muslims of India owe allegiance to the Ottoman *Khalifas.* He condemns Sharif Hussain's revolt in Arabia against the authority of the *Khalifa* and declares him a rebel who sided with the enemies of Islam. "A Muslim", maintained Abul Kalam, "who dies without rendering aid and succour to the Turkish *Khalifa,* dies an un-Islamic death. Obedience to the *Khalifa* is obedience to the Prophet and obedience to the Prophet is obedience to God.[2]

This was in short the essence of Maulana Azad's thought on the unity and solidarity of the Muslims and the ultra-territorial nature of their *Qaumiyat* and his attitude towards the *Khilafa.* He was in favour of a party of God *"Hizbullah"* which would endeavour to bring these ideas into action. Although he himself later deviated to Nehru's socialism and nationalism, he left an indelible mark on Muslim thinking in the subcontinent and helped to nurture such views as those of Maududi. His early writings also established that theoretical framework on which the ideas of the *Khilafat* leaders were based. *Jami'at-ul-'Ulama'-i-Hind* was also largely in agreement with his attitudes on such matters as *Khalifa,* but while Maududi and others retained these views, Maulana Azad and the *Jami'at* began to reinterpret their stand in ways which brought them in agreement with the Congress.

(c) Jami'at-ul-'Ulama'-i-Hind

The *Jami'at-ul-'Ulama'* was established under the guiding spirit of Maulana Mahmud Hasan, a prominent theologian, in 1920.[1] This was an organization of clerics, the purpose of which was to provide an opportunity for joint discussion and decision by the body of the *'Ulama* on matters of religious importance facing the Muslim Community in India.[2] Maulana Anwar Shah, at one time the General Secretary of the *Jami'at-ul-'Ulama-i-Hind* draws the justification for the establishment of the *Jami'at* from Hadith. Because this throws as explanatory light on the aims and objects of the organization, it is reproduced here:

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[1] Abul Kalam Azad, *Mas'ala-i-Khilafat,* op. cit. p. 73

[2] ibid. p. 187.

> "Ali (the fourth Caliph) had said that when I asked the Prophet of Allah (peace be upon him and his followers) 'O Prophet of Allah, if anything happens which the *Shari'a* neither forbids nor permits, what line of action should be taken? The Prophet's answer was that the *'Ulama* and the sincere worshippers should be consulted and in no case should the opinion of one person be allowed to prevail."[3]

The *Jami'at* was founded at the time when the Indian Muslims were deeply involved with the *Khilafat* Movement. Shaikh Muhammad Habib-ur-Rahman 'Uthmani, another important leader of the *Jami'at* pointed out that the *Jami'at's* aims and ideas are connected with the religious guidance of Muslims, and because the religious interests of Muslims extend far beyond the boundaries of the Indian sub-continent, it is incumbent upon the Indian Muslims to support the Muslim *Khalifa* in Turkey. Striving for his protection and preservation is important. To sympathise with the Muslims of the world is imperative. To aid those who are at war with Muslims and bent upon destroying Islam and the *Khilafa* is completely forbidden".[4]

The *Jami'at* was closely connected with the Indian National Congress, and as far as their political interpretation of the principles of Nationalism was concerned they were in complete agreement with the Congress. This means that although on the

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[1] Hamidul Ansari Ghazi, *Mukhtasar Tarikh-i-Jami'at-ul-'Ulama-i-Hind* (Department of Publications Jami'at-ul-'Ulama; U.P. n.d) p. 2.

[2] Maulana Anwar Shah Kashmiri, "Presidential Address" (8th sitting of the Annual Conference of Jami'at-ul-'Ulama-i-Hind, 1927) Quoted from Maulana Muhammad Mia (ed) *Jami'at-ul-'Ulama-i-Hind Ki Shar'i Ahmiyat Aur Us Kay Aghraz-o-Maqasid Aur Fahrist-i-Khidmat* (Central Office of Jami'at, Delhi, n.d.) p. 2.

[3] ibid pp. 2-3

[4] ibid p. 7

one hand their ideology was based on preservation of *Khilafa*, their political views about the political status and future of the Muslims of India were based on the theory that India after independence should be a secular state. This organization still exists with its headquarters at Delhi and with the daily *al-Jami'a* as their official organ. The *Jami'at-ul-'Ulama* has also been able to give a theological basis to its political platform, and to cast it in a specifically Islamic form. They use the concept of *Mu'ahida* (mutual contract) derived from the Statute of Medina. Their thesis is that since independence, the Muslims and the non-Muslims in India have entered upon a mutual contract, to establish a secular state, and the Constitution of India, which the Muslim community's elected representatives unanimously support and to which they swore allegiance, represents the *Mu'ahida*.[1]

The arguments advanced by the *Jami'at* against the Muslim League, which was striving for the establishment of the Muslim Homeland (Pakistan), were mostly about the Muslim League's leadership. Their arguments were that the Muslim League, which was dominated by the Westernised intelligentsia, could not be trusted to establish a State based on Islam. As a result, mainly, of the support of the Congress on the *Khilafat* issue, the leaders of the *Jami'at* were members of the Congress as well. Abul Kalam Azad himself, who at one time had actually been President of the Congress, took an active part in the matters of the *Jami'at*.[2]

Abul A'la Maududi was influenced by this Congress-motivated organization[3] at the beginning of his political-literary career and that, might have contributed to his failure to support the Pakistan Movement. This also defined his attitude towards the concept of a universal community of Islam as envisaged by the leaders of the *Khilafat* Movement in India.

(d) The Khilafat Movement.

By claiming to be *Khalifas*, the Mughal Emperors of India spirit of Maulana Mahmud Hasan, a prominent theologian, in 1920.[1] This was an organization of clerics, the purpose of which was to provide an opportunity for joint discussion and decision by the body of the *'Ulama* on matters of religious importance facing the Muslim Community in India.[2] Maulana Anwar Shah, at one time the General Secretary of the *Jami'at-ul-'Ulama-i-Hind* draws the justification for the establishment of the *Jami'at* from Hadith. Because this throws as explanatory light on the aims and objects of the organization, it is reproduced here:

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[1] W. C. Smith, *Islam in Modern History*, (Princeton U.P. 1957) pp. 284-285) He bases this on an interview with Maulana Hafiz-ur-Rehman, Delhi, 1956.

[2] The Annual Conference of Jami'at-ul-'Ulama-i-Hind held in Lahore, was presided over by Maulana Abul Kalam Azad, who later became the President of the Congress.

[3] Maududi edited *al-Jami'a*, the official organ of the Jami'at-ul-'Ulama-i-Hind, from 1924 to 1927-8,

> "Ali (the fourth Caliph) had said that when I asked the Prophet of Allah (peace be upon him and his followers) 'O Prophet of Allah, if anything happens which the *Shari'a* neither forbids nor permits, what line of action should be taken? The Prophet's answer was that the *'Ulama* and the sincere worshippers should be consulted and in no case should the opinion of one person be allowed to prevail."[3]

The *Jami'at* was founded at the time when the Indian Muslims were deeply involved with the *Khilafat* Movement. Shaikh Muhammad Habib-ur-Rahman 'Uthmani, another important leader of the *Jami'at* pointed out that the *Jami'at's* aims and ideas are connected with the religious guidance of Muslims, and because the religious interests of Muslims extend far beyond the boundaries of the Indian sub-continent, it is incumbent upon the Indian Muslims to support the Muslim *Khalifa* in Turkey. Striving for his protection and preservation is important. To sympathise with the Muslims of the world is imperative. To aid those who are at war with Muslims and bent upon destroying Islam and the *Khilafa* is completely forbidden".[4]

The *Jami'at* was closely connected with the Indian National Congress, and as far as their political interpretation of the principles of Nationalism was concerned they were in complete agreement with the Congress. This means that although on the

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[1] Hamidul Ansari Ghazi, *Mukhtasar Tarikh-i-Jami'at-ul-'Ulama-i-Hind* (Department of Publications Jami'at-ul-'Ulama; U.P. n.d) p. 2.

[2] Maulana Anwar Shah Kashmiri, "Presidential Address" (8th sitting of the Annual Conference of Jami'at-ul-'Ulama-i-Hind, 1927) Quoted from Maulana Muhammad Mia (ed) *Jami'at-ul-'Ulama-i-Hind Ki Shar'i Ahmiyat Aur Us Kay Aghraz-o-Maqasid Aur Fahrist-i-Khidmat* (Central Office of Jami'at, Delhi, n.d.) p. 2.

[3] ibid pp. 2-3

[4] ibid p. 7

one hand their ideology was based on preservation of *Khilafa*, their political views about the political status and future of the Muslims of India were based on the theory that India after independence should be a secular state. This organization still exists with its headquarters at Delhi and with the daily *al-Jami'a* as their official organ. The *Jami'at-ul-'Ulama* has also been able to give a theological basis to its political platform, and to cast it in a specifically Islamic form. They use the concept of *Mu'ahida* (mutual contract) derived from the Statute of Medina. Their thesis is that since independence, the Muslims and the non-Muslims in India have entered upon a mutual contract, to establish a secular state, and the Constitution of India, which the Muslim community's elected representatives unanimously support and to which they swore allegiance, represents the *Mu'ahida*.[1]

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(d) **The Khilafat Movement.**

By claiming to be *Khalifas*, the Mughal Emperors of India had not broken away completely from the Arab world, and had repeatedly expressed their devotion to the *haramayn* in Mecca and Medina.

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With the disintegration of the Mughal power and gradual expansion of the foreign rule in India, the position, however, changed and there is evidence that the *Khalifa's* name once more began to be mentioned in *Khutbas* in certain parts of India.[1] With the fall of the Mughals, the eyes of the Indian Muslims were once more entirely on the Turkish *Khilafa*. With the growth of political consciousness the Muslims began to realize the increasing need for retaining the spiritual and political contact with the *Khilafa*. This was demonstrated by sending a medical mission and financial assistance to Turkey during the Balkan War.

When the First World War began and the Indian Muslim found himself divided between loyalty to political overlords and the forces of the spiritual bond with Turkey, he became increasingly concerned with the safety of the Holy places. In this atmosphere of conflict the *Anjuman Khuddam-i-Ka'ba* was constituted by the prominent *'Ulama* of India. Among those who took the initiative were Maulana 'Abdul Bari of Firangi Mahal, Maulana Muhammad 'Ali and Shaukat 'Ali and Shaikh Mushir Husain Qidwai.

The activities of these *'Ulama* became very aggressive and both the Ali brothers and Abul Kalam Azad were arrested. Soon after this Maulana Mahmud Hassan refused to sign the *fatwa* sponsored by the British against the Ottomon *Khilafa*. He was later taken from Mecca to be imprisoned in Malta.

In March 1919, the Rowlatt Bill became an Act. A *Hartal* was announced which was followed by the Jalliyanwala Bagh tragedy.

Besides the oppressive measure at home the dismemberment of Turkey was in full progress after the war. Great Britain ignored the pledges about Turkey and the Holy places; Thrace was given to Greece, the Fertile Crescent was divided between Britain herself and France as Mandatories, and the Turkish Capital was put under the control of a commission. Thus the *Khilafat* was reduced to a mere puppet. The Indian Muslims

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[1] See Pakistan Historical Board, *History of Freedom Movement* (Karachi, 1951), pp. 207.

now had no alternative but to launch a countrywide movement. An All India *Khilafat* Conference was held on the 24th November 1919. Sympathy from the Congress was won and Mr. Gandhi became an active supporter of the *Khilafat* Movement. A number of resolutions were passed. An appeal was made not to participate in the victory celebrations. It was decided also to boycott British goods if no heed was paid to the demands in regard to *Khilafat*.

Soon after, Muhammad 'Ali was arrested and tried because of the resolutions passed at the *Khilafat* Conference in Karachi. A number of charges were proffered against him and six others for conspiring to seduce Muslim troops from their allegiance to the British. It was in his speech to the Jury that he set out most cogently the stand of the *Khilafat* Movement. Maulana Muhammad 'Ali held that it is the command of God that a Muslim should not take arms against a Muslim without sufficient justification. "Whatever respect I may have for the King, I may not bow before him when he asks me not to bow before my God and His commandments."[1]

He had also said earlier: "This question......is not merely a Turkish question, it is an Islamic and Indian question, an Algerian question, and a Tunisian question. It is the question of the preservation of the *Khilafat*. The *Khilafat* is the most essential institution of the Muslim community throughout the world. A vast majority of the Muslims of the world recognize the Sultan of Turkey to be the Commander of the Faithful, and successor and *Khalifa* of their Prophet. It is an essential part of this doctrine that the *Khalifa*, the Commander of the Faithful, should have adequate territories, adequate military and naval resource, adequate financial resources. But for what purpose? Not for aggression, nor even for the defence of Turkey, but for the defence of our faith. He is to stand before the world as the leader of the Muslims in this cause, and whenever the liberty of conscience of the Muslims in any part of the world is placed in jeopardy, he would at least be able to say to the aggressor. "You shall not do that with impunity! (cheers)."[2] He also explained that he wished the *Khalifa* to have his armies for the purpose of guarding the Holy places of Islam.

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[1] Afzal Iqbal, *Select Writings and Speeches of Maulana Mohammad Ali*, Vol. II (Ashraf, Lahore, 1963) p. 63.
[2] ibid p. 1.

With the dismemberment of Turkish territories and ultimately the abolition of *Khilafa,* this last crusade in favour of the *Khilafa* ended, leaving an indelible mark on the minds of the Indian Muslims.

History had decided once for all that *Khilafa* was no longer the centre of the Islamic theory and had once more asserted the theory of *Mulk* enunciated by Ibn Khaldun. But slight re-adjustments were necessary and these were provided by Iqbal.

(e) **Dr. Muhammad Iqbal**

Iqbal's ideas have also had a very deep influence upon the thought of Maududi. It is necessary, therefore, to give a short outline of Iqbal's ideas on *Millat, Shari'a, Ijtihad* and *Khilafa.*

Iqbal regards the state in Islam as "......an effort to realise the spiritual in a real organization."[1] It is through the spiritual that the merging of the individual into the *Umma* or *Millat* (the Islamic community) is achieved bringing nearer to realization the establishment of the universal Brotherhood that Islam conceives. It is only by following the path described by God (the *Qur'an)* that we can find the true meaning of life. He believes that the *Shari'a* is the only complete code which describes the path for establishing God's will on earth. Islam to him is unlike other religions in that it is neither mere thought nor mere feeling nor mere action; it is an expression of the whole of man.[2] There can be no separation of the secular and the religious, and for this reason no one institution of man can be considered in isolation. State, *Millat, Imam,* individual and government cannot be treated separately. To him, "the whole of this world is a mosque."[3] We find him saying; "*Qur'an* considered it necessary to unite religion and state, ethics and politics in a single revelation."[4]

To Iqbal the Islamic foundation is rooted in the principle of *tauhid.* The Islamic polity is only a practical way of establishing this principle in the emotional and intellectual life of mankind. The unity of God, then is the ultimate basis of all life, and the purpose of God is revealed to us in explicit terms in the shape of the *Qur'an.* However, from this it does not

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[1] Muhammad Iqbal, *Six Lectures on Reconstruction of Religious Thought in Islam,* (Kapur, Lahore, 1930) p. 217.
[2] ibid p. 3.
[3] ibid p. 231.
[4] ibid p. 217.

follow that the pattern of the Islamic State is fixed once and for all because Islam has provided for change and mobility through *Ijtihad.* If this provision had not been included, Islam would have become stagnant, the essential thing is that both the eternal and the mobile principles are to be harmonised. "The *Qur'an,* he says, "provides for what is eternal but the principle of movement in the structure of Islam is provided by *Ijtihad.*"[1] Iqbal admits, however, that during that past few centuries Islamic law has been reduced to immobility. He ascribes this to causes such as the fall of Baghdad, the Sufi emphasis upon the purely speculative, and the conservatives who had to make the legal system more rigorous and traditional to preserve it from the Rationalist attacks. He asserts that if Islam has to re-discover its practicability, *ijtihad* has to be brought into play once more. His views on the extent of *ijtihad* are so liberal that he is even willing to change the nature of *Khilafa.* He says, "According to Sunni Law the appointment of an *Imam* or *Khalifa* is absolutely indispensable. The first question which arises in this connection is this—Should the Caliphate be vested in a single person? Turkey's *ijtihad* is that according to the spirit of Islam the Caliphate or Imamate can be vested in a body of persons, or an elected assembly.....Personally, I believe that the Turkish view is perfectly sound. It is hardly necessary to argue this point. The republican form of government is not only thoroughly consistent with Islam, but has also become necessity in view of the forces that are set free in the world of Islam."[2]

He holds that *Khilafa* has been "overshadowed or rather displaced by Arabian Imperialism of the earlier centuries of Islam".[3] He says that to reassert the Islamic principles we must adopt the "International Ideal." "For the present," he says, "every Muslim Nation must sink into her own deeper self, temporarily focus her vision on herself alone, until all are strong and powerful to form a living family or republics."[4]

From this, it becomes clear that although he is admitting the need for the Muslim nations of the world to accept the principle of development within their national boundaries, his is an ethical ideal. He is neither an Imperialist nor in the u'timate analysis a Nationalist. Nationalism, he believes, is based on accident of race, language, colour rather than on a belief in unity of God and the human fraternity which is implicit in the teachings of the *Qur'an*. It is therefore, an evil which must be destroyed.[1] In other words he considers nationalism as a stepping stone to the higher human fraternity and creation of a true *Umma*. This was also endorsed by his Allahabad address to the Muslim League Annual Conference. He suggested that a separate political entity should be created for the Indian Muslims to serve as a microcosm for the macrocosm which would establish a real universal *Umma*.

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[1] Dr. Muhammad Iqbal, *Reconstruction* op.cit., p. 209.
[2] ibid p. 220.
[3] ibid p. 222.
[4] ibid p. 223.

These ideas were further clarified when, just before his death, Iqbal entered into a fierce controversy over 'Muslim' as opposed to 'Indian nationalism' with one of the most important leaders of the *Jami'at ul-'Ulama-i-Hind*, Maulana Husain Ahmad Madani. It began when, in refutation of a statement by the latter in which he had said that Nationalism has a territorial connotation,[2] Iqbal wrote three couplets.[3] An exchange of letters through the press followed, and these set down the basic stand of each protagonist on *Millat* (Muslim Community) and *Watan* (Nationalism based on territory). Each writer tried to justify his own point of view in the light of Islam and insisted

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[1] Note the following couplets:

ملت بیضا تن و جان لا اللہ ساز ما را پردہ گردان لا اللہ
دیں ازو حکمت ازو آئیں ازو زور ازو قوت ازو تمکیں ازو

[2] ''قومیت کی اساس وطن پر ہوتی ہے'' (Nationalism is inconceivable without territory).

[3] عجم ہنوز نداند رموز دیں ورنہ
ز دیوبند حسین احمد ایں چہ بوالعجبی است
سرود بر سر منبر کہ ملت از وطن است
چہ بے خبر ز مقام محمد عربی است
بمصطفی برساں خویش را کہ دیں ہمہ اوست
اگر بہ او نہ رسیدی تمام بو لہبی است

These verses were first published in the Daily *Ihsan*, Lahore, 31st January, 1938.

that his own interpretation was nearer to Islamic provisions.[1]

Maulana Madani argued: "The word *qaum* (nation), is used for that group of people which has a unity among themselves. It is immaterial whether this unity is based on religion, *wataniyyat*, race, colour, profession or any other literal or recognisable reality."[2] In another booklet written and published after the death of Iqbal,[3] Madani quoted nine verses from the *Qur'an* in support of his conception of *Qaum*. In them, Muslims and non-Muslims living in one territorial boundary were referred to as one *qaum*.[4]

Iqbal, on the other hand, asserted that Muslims wherever they reside, are a part of the *Millat-i-Islamiya*, and the community, which comes into being through its belief in one God is not at all dependent upon the political boundaries of states, for Islam transcends all unnatural boundaries set by man. It is in respect of these views on *Millat-i-Islamiya* that we find Maududi in complete agreement with Iqbal. The other aspect of Iqbal's thought which dealt with the creation of Pakistan to preserve the economic and social interests of the Indian Muslims by way of a new state, does not find acceptance with Maududi. In other words, in tracing the impact of the writings of Iqbal upon the formulation of Maududi's political and religious ideas we discover that two aspects of Iqbal's thought are particularly important. (a) That the part of his thought which is concerned with broader view of Muslims as citizens of the world, their problems as an *Umma*, both religious and political, may be noted first. Maududi would agree with Iqbal's views on this. But when it comes to (b) solving the problems of the Indian Muslim Community in their special Indian setting, Iqbal recommends the creation of a separate political entity for the preservation of the interests of this community as a logical outcome of (a) above, Maududi would disagree.

(iii) Maududi's Political Premises and the Jama'at-i-Islami

Although the religious aspects of Maududi's policies and attitudes before the partition of India were clear, his stand on political matters remains vague and ambiguous. From the time when he took up the editorship of the *Tarjuman-ul-Qur'an*, through the years when he extended his invitation to Islam at the *Dar-al-Salam*, right up to the partition of India, he criticised the political attitudes of the All India National Congress and called upon Muslims to boycott that political party. On the other hand, he was also in disagreement with the Muslim League, mainly because of the Westernising influences within it. Although ample evidence exists in his writings of the ideological and long term extra territorial Pan Islamic plans, he never once submitted his own solution to the existing Indian political problems. It could, then, be said that he probably believed in bringing about Muslim rule over the whole of the Indian sub-Continent.

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[1] See *Millat aur Watan Maulana Hussain Ahmad Madani aur Allama Sir Mohammad Iqbal ki Bahth* (Idara-i-Roznama Shams, Multan, n.d.) probably 1940.

[2] *Millat aut Watan*, op. cit., p.10.

[3] Hussain Ahmad Madani, *Mutahidda Qaumiyyat aur Islam* (Majlis-i-Qasim-ul-Mu'arif, Deoband n.d. probably 1939).

[4] ibid pp.18, 19,

This can be supported by a number of arguments :—

(a) Most of the *Jama'at-i-Islami's* own assessment of itself attributes the genesis of the *Jama'at* to a general movement of *Return to Islam* begun in India by Shah Waliullah of Delhi. Sayyid Ahmad Shah Barailvi, and Shah Isma'il Shahid.[1] Shah Waliullah's movement had been directed towards the revitalization of Islam both as a religion and as a political force in India. The anti-British and anti-Sikh movement of Ahmad Shah Barailvi and Shah Isma'il had also been directed towards the same end, although the political side of it was even more emphasised. Its political bias can be gathered from the fact that Ahmad Shah Barailvi was created a *Khalifa* at Peshawar. This whole movement was inclined towards recreating Muslim dominance in India. This is clear from the letter written by Shah Waliullah to Ahmad Shah Abdali, who was at the time the Amir of Afghanistan.

(b) When partition became imminent in April 1947, in a speech at Madras, Maududi expressed his intention that the *Jama'at-i-Islami* should be split into two, one part working in Pakistan and the other making India its base.[2] Since the partition those two parties have existed, both trying to establish an Islamic State. One in the Muslim majority Pakistan, under the

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[1] Maududi, *Tajdid-e-Ihya-i-Din. op. cit; and* Khurshid Ahmad, (ed) *Tahrik-i-Islam Shah Waliullah aur un key Ba'd.* (Idara-i-Charagh-i-Rahi, Karachi, 1953) pp. 46-68.

[2] L. Binder, *Religion and Politics in Pakistan, op. cit, p. 9*

headship of Maududi himself, endeavouring to establish an Islamic state by publicity, gathering support among the masses and taking an active part in politics; and the other, in Muslim-minority India, striving to bring about that majority by proselytizing.

(c) He supported neither Congress, which planned to bring the whole of India under the rule of the majority, nor the Muslim League, which was striving to establish a separate political entity for the Indian Muslims.[1]

Although, after the formation of the *Jama'at* the claim of the Muslim League for the partition of India is never endorsed, Maulana Maududi did, in fact, give his own three alternative plans for the future of India. One writer[2] goes as far as saying that the *Jama'at-i-Islami* might have been created for the mere purpose of opposing the Muslim League's Pakistan Resolution (passed in Lahore on 23rd March, 1940), as it was launched on 25th August, 1941.[3]

It is very interesting to note that although one of these plans was very similar in content to the Pakistan Resolution, no mention of these plans is made by the Maulana in any of his writings after the creation of *Jama'at*, until the partition. However, it is also significant that since the birth of Pakistan especially since Maududi began to identify himself with those who had worked for the creation of Pakistan, these plans have been constantly mentioned by his supporters. These plans were first published in the *Tarjuman-ul-Qur'an* in the October, November and December issues in 1938. But because these plans do not in any way seem to have had any influence upon his political theory after the creation of the *Jama'at*, these can only be considered temporary. The first plan, incidentally, is very similar to the ideas incorporated in the Muslim League's Pakistan Resolution. The second talks about areas which are predominantly Muslim, and of mass movement of population over a period of 25 years; and the third of a three tier confederation which later, in 1946, became the basis of the Cabinet Mission Plan. Talking about the Congress, he points out in this article, attitudes before the partition of India were clear, his stand on political matters remains vague and ambiguous. From the time when he took up the editorship of the *Tarjuman-ul-Qur'an*, through the years when he extended his invitation to Islam at the *Dar-al-Salam*, right up to the partition of India, he criticised the political attitudes of the All India National Congress and called upon Muslims to boycott that political party. On the other hand, he was also in disagreement with the Muslim League, mainly because of the Westernising influences within it. Although ample evidence exists in his writings of the ideological and long term extra territorial Pan Islamic plans, he never once submitted his own solution to the existing Indian political problems. It could, then, be said that he probably believed in bringing about Muslim rule over the whole of the Indian sub-Continent.

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[1] Maududi, *Process of Islamic Revolution* (Markazi Maktaba Jama'at-i-Islami, Lahore, 1955) p. 21

[2] Freeland Abbott. op. cit. p. 36

[3] Maududi, "Musalman Kia Karain-Teen Tajawiz", in *Tarjuman-ul-Qur'an* (November-December 1938) pp. 6-15

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[2] Freeland Abbott. op. cit. p. 36

[3] Maududi, "Musalman Kia Karain-Teen Tajawiz", in *Tarjuman-ul-Qur'an* (November-December 1938) pp. 6-15

"We, (as Muslims) are a permanent *Qaum* the cumulative life of which is based on precise moral and civic rules. We have got some basic and inherent disagreements with the majority *qaum*. The moral and civic principles of this *qaum* are opposed to ours......so it is not possible that we should weld ourselves into one whole". Maududi then goes on to say that even on those matters like education where we agree with the Congress and the Hindus, this agreement is only about the importance of education and there is bound to be a disagreement in respect of its contents and the purposes that we have in mind.[1] And again, "Their path (that of the Hindu majority) and ours can run parallel, and can even come together in places, but that they should coincide is not possible.[2]

The very foundation on which the Muslim League had based its claim for a separate state, was the belief that the Muslims in India formed a separate nation, and that for political, economic and social reasons it would not be possible to live congenially in a Hindu-dominated India. Looking at Maududi's statement above, one feels that it is more in agreement with the policies of the Muslim League than with his own emphasis upon broader Islamic ideals.

It is very difficult to understand why Maududi did not recognize the legitimacy of the Pakistan Resolution although it was reiterating the views of Maududi as explicitly put in one of his three plans. In later years such lapses in favour of a democracy are not found in him at all. This article begins with praise of democracy and majority rule, then goes on to explain that majority rule can be beneficial only where the components of the nation are not nations as widely separate as Muslims and Hindus. This was incidently the Muslim League's argument. In fact the centre of his argument is not Islam but Muslims, and he makes no reference to the Universal Islamic Brotherhood of Pan-Islam here. The only explanation which can be given to it is that this series was probably written as a criticism of the 1935 Act which gave a new Constitution to India, wherein no safeguards for the interests of the Muslim Community were incorporated.

Encouraged by Maududi's criticism of the Congress, the

Muslim League approached him through Maulana Zafar Ahmad Ansari[1] to endorse the Muslim League programme. He was invited twice by the Muslim League to work with them, but both times he refused. The first time was when he was asked, in 1937, to join in the work of the Muslim League research group. The second time was when he, Zafar Ahmad Ansari, the then Office Secretary of the Muslim League, extended the invitation in 1945.[2]

On the 25th August, 1941, when seventy-five people collected in Lahore to initiate the *Jama'at-i-Islami* and to draw up its constitution, the emphasis was much more religious than political. Maulana Maududi, who had issued his *invitation to Islam,* was elected as the Amir of the *Jama'at.* The formation of *Jama'at* was based on the argument that, "Although there are many individuals who have been working in the *Path of Allah,* they should understand that for those who have one purpose and one ideal to remain isolated is not only wrong in principle, but also is unprofitable in practical terms."[3] After launching the *Jama'at,* he wrote about the general principles which had brought it into being, including the condition of the Indian Muslims. Majority rule or matters regarding nationalism are not mentioned in it at all. He said, "The idea on which the constitutional foundation (of the *Jama'at)* has been placed is that we should not only strive for the realization of one single aspect of Islam or talk of one single aspect or the religious ideals of the Muslims, but should stand for Islam as a whole. The purpose for which Prophets have come to the world should be our purpose. We should reiterate the invitation given by them, and the methods which they used to make a congregation of their followers—we should also use for our *Jama'at*......"[4]

Just before the launching of this organization, Maududi had his headquarters moved to Lahore. This is a very significant step. Lahore, being a cultural centre of the Indian Muslims, could, he thought, serve better as a venue for the active and

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[1] Maududi *Teen Tajawiz* op. cit., p. 48
[2] ibid p. 49

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[1] Maulana Zafar Ahmad Ansari was the same man who was deputed by the Muslim League to organize *Jami'at-ul-'Ulema-i-Islam,* an organization of the *'Ulama* in favour of the Muslim League. This organization was created to oppose the *Jami'at-ul-'Ulema-i-Hind,* who were anti-League and favoured the Congress in its policy of a collective Indian Nationalism and justified it in the light of the *Shari'a.*
[2] L. Binder, op. cit. pp. 94-95
[3] *Tarjuman-ul-Qur'an,* Vol. 18. No. 2, p. 13.
[4] *Tarjuman-ul-Qur'an,* Vol. 18, No. 2, p. 14

vigorous policies which he had in mind for the organization. The isolated rural district of Gurdaspur could not have served his purpose. If we accept the view that the *Jama'at* was in fact created to oppose the Muslim League, this geographical change becomes even more significant.

The main emphasis in the constitution of the *Jama'at-i-Islami*, as drawn up at its inception, was on personal righteousness. It is interesting to note that within the clauses of the constitution no mention is made of the establishment of an Islamic State of the general structural matters of such a state or the principles on which it is supposed to be based or for that matter the methods which have to be adopted for its establishment. Its language is evangelical, corrective at the individual rather than at the social and collective levels.

The constitution comprises eleven clauses which are listed under six subjects.

The first subject, which is entitled *Aqida* (Belief or faith), contains only one clause. It reads: "The basic term of faith of the *Jama'at-i-Islami* is that "There is no god but God, and Muhammad is His Messenger". "The constitution then discusses the full implication of the *Kalima Tayyiba* (above) and explains that to consider any one but God as the object of worship places a man out of the pale of Islam. The second clause emphasises the need to take the word of God to those who are ignorant of His name and His supremacy. It urges its members to forget the superficial gods of nationalism, race, colour, etc., and become one in His praise and worship, following the rules of morality set by Him. The third and fourth clauses deal with the personal qualifications of those who apply for membership. Here puritanical attitudes are stressed, along with the idea that a person serving those governments which recognise a sovereignty other than of God should resign from government service before he can hope to be selected to *Jama'at's* membership. After the creation of Pakistan, however, while the recognition of Pakistan as an Islamic state by the *Jama'at* had still not come into effect, it had some membership among those who served the government. Later, when the *Jama'at* came under the wrath of the subsequent governments, the *Jama'at* issued a circular, and those members who were government employees were relegated from their full membership to the position of "sympathisers". The total membership of the *Jama'at-i-Islami*, however did not rise to more than about 500 before partition, although its sympathisers may have had a higher number. There is no way to ascertain the exact number of sympathisers now. The party has been very strict in according membership. It is with almost communist thoroughness that they have considered and reconsidered applicants for membership. A man may have to work for many years to prove himself worthy of membership before he can be accepted in the ranks of the party. The *Jama'at* has explained in its own writings that it is an ideological party, and therefore, *until such time as a candidate thoroughly proves* that he agrees with their ideology, he cannot be admitted to its membership.

CHAPTER III

THE PROBLEMS OF CONSTITUTION MAKING IN PAKISTAN AND ISLAM

(i) The Early Phase

Pakistan has been created as the result of the Muslim League's claim that the Muslims of India formed a separate nation from the Hindu majority of the sub-continent. This claim was advanced by Sir Sayyid Ahmad Khan in the nineteenth century and the Muslim League inherited it and made it the central point of their political policies when they realized that All India National Congress dominated by the extremist Hindus was not willing to allow constitutional safeguards to the minority communities including the Muslims of India. The Muslim League's political activities had throughout been concentrated upon some sort of a Confederation in which the constitution would preserve their religious and cultural interests. Their political fight was thus in favour of a separate electoral system by which they would be able to elect their own members to the legislatures. The plan for Pakistan only came out when these constitutional safeguards were found to be un-acceptable to the Hindu majority. It is significant that the Muslim League accepted the Cabinet Mission plan for the creation of a three tier Federation for the Indian sub-Continent as late as the early months of 1947.

In other words the Muslim stand was that India is inhabited by two major nations, the Hindus and the Muslims, while the Congress held that the two-nation theory was sectarian and communal and therefore, it was un-acceptable to them.

The first readjustment which the newly created Pakistani Nation had to make after the Partition of India was to abandon the two-nation theory in a limited sense. In spite of the fact that Pakistan had at the time of Partition over 14.1%[1] non-Muslims living in the new State, the readjustment of policy was found necessary.

The Leaders in Pakistan gave out that the need for any constitutional safeguards for minorities had now disappeared because Pakistan had come into being for the specific purpose of removing the very need for these safeguards. In the first meeting of the Constituent Assembly of Pakistan, Mr. Muhammad 'Ali Jinnah declared "Every one first second and last is a citizen of this State with equal rights, privileges and obligations" and that in the new domocracy (Pakistan) "Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense because that is the personal faith of the individual, but the political sense as citizens of Pakistan."[1]

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[1] *The Census of Pakistan Report* 1951 p. 6-2

This was a simple liberal statement of a Westernised politician but it was not received well either by the men of religion, or by the minorities. The men of religion were of the opinion that Pakistan had been created for the specific purpose of bringing back the lost glory of Islam in the shape of the imposition of the *Shari'a* which stipulates that the minorities may be considered as *Ahl-al-dhimma* and asked to pay *Jizya,* a protection tax, and that not making *Shari'a* the basis of law would be a repudiation of the very purpose of Pakistan's creation. A greater section of the minorities on the other hand demanded that they should be allowed constitutional safeguards and a separate system of electorates to preserve their sectional interests. They also hoped that what the Muslims were striving for when they were in the minority they would not deny to the other communities when these are in minority. An attempt to legitimise the stand of the men of religion came from Maulana Maududi on the 6th February 1948 in the shape of his Four Demands,[2] regarding the creation of an Islamic State in Pakistan. With these Maududi began a crusade in favour of the Islamic State by public speeches. With his supporters he visited and addressed public meetings in important cities and remote towns.

In April he lead a delegation from his party to meet Maulana Shabbir Ahmad 'Usmani to explain the Four Demands. Maulana Shabbir Ahmad 'Usmani was at the time an outstanding figure among the 'Ulama and was the President of the *Jami'at-al-'Ulama-i-Islam.* This was an organization of the

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[1] *Constituent Assembly of Pakistan Debates* Vol. I.

[2] Quoted in Chapter Four.

'Ulama created to oppose the *Jami'at-ul-'Ulama-i-Hind* who had given unbridled support to the All India National Congress in the pre-Independence era. The *Jami'at-ul-'Ulama-i-Islam* had supported the Muslim League in the creation of Pakistan and subsequently Maulana 'Usmani was appointed to the Constituent Assembly. Other important members of this organization were Maulana Akram Khan, who was also the President of the East Pakistan provincial Muslim League, Pir of Manki Sharif, Maulana 'Abdullah al-Baqi and Maulana Zaffar Ahmad Ansari.

Although it was said in the *Jama'at-i-Islami* journal *(Tarjuman-ul-Qur'an)* that Maulana 'Usmani did not disapprove of the Four Demands, subsequent study of the press shows that at no time did he openly support them as Four Demands and as Maududi's. Soon after Maulana Maududi was arrested by the Punjab Government under the allegation that he had declared that the Kashmir War was not *Jihad* and those who died fighting would not die in the path of *Allah* and therefore, fire awaits them in hell. From Maududi's arrest it became clear that the government would not tolerate unlimited criticism from the 'Ulama. Maulana 'Usmani who had, had direct access to the Prime Minister Mr. Liaquat Ali Khan and Mr. Muhammad Ali Jinnah must have had discussions with these men and his hopes must have been frustrated for him to declare that the Muslim League was desirous of getting rid of the 'Ulama.[1] He had protested against the arrest of Maududi and had said that Pakistan had come into being for the purpose of becoming an Islamic State and had cited numerous statements from the Quaid-i-Azam and Mr. Liaquat Ali Khan to this effect.[2]

He declared:

> "They want the Mullah to converage his whole attention on reforming the society while they can go on and spoil society. If the term 'unsuitable environment' is to mean that the environment of those who rule us is unsuitable then the community will have to reconsider who is to govern them......it is also said that the Mullah wants Power......I say when people can aspire for power for worldly gain what is the harm if the Mullah aspires for

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[1] Shabbir Ahmad 'Usmani, Khutba-i-Sadarat to Jami'at-ul-'Ulama-i-Islam, East Pakistan Branch, Conference (Dacca, Feb. 10th 1949) Urdu.

[2] ibid p. 51

> power to set up a State based on Islamic principles. The Mullah does not want power, he only wants those who are in power to be somewhat like himself.”[1]

In this speech he also suggested that a committee consisting of well known ‘Ulama should be set up by the Constituent Assembly to prepare a draft Constitution and present it to the Assembly.[2] In this demand he was reiterating the opinions of Maulana Maududi that only the ‘Ulama and those learned in the intricacies of Islamic Law are qualified to frame an Islamic Constitution. After this speech direct and indirect pressure was put on the Muslim League leadership for a clear statement of intention in regard to the nature of the coming Constitution. Consequently within three weeks of this demand the Muslim League Parliamentary Party met to consider this and came out with what came to be known as the Objectives Resolution. This was introduced in the Constituent Assembly on March 7, 1949, and the Resolution embodying the main principles on which the Constitution was to be based was finally adopted on March 12, 1949.

(ii) **The Objectives Resolution** [3]

The Objectives Resolution was not the Constitution but merely a statement of intentions, and it was on the principles based on these intentions that the Constitution was to be based. The press, the ‘Ulama and the Muslim League were generally delighted with the statement that the new Constitution was to be based on Islamic principles. The Resolution was in a way a compromise. The words of the Resolution spoke differently to different people. The Westernizing elements considered it merely as a statement of fact. Mian Iftikharuddin said “I see that a section of the press gave out as if they had scored a journalistic scoop by reporting that the authority is derived from a higher power. It does not lie in our power to change the law of nature's God. In saying that we have not done anything extraordinary.”[4] Some on the other hand gave it the interpretation that now that recognition had been given to the Sovereignty of Allah, this would give more play to morality in the political sphere.

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[1] ibid pp. 39-40

[2] ibid p. 42

[3] *Constituent Assembly of Pakistan Debates*, Vol. V. No. 1 (March 7th 1948). pp. 1-2. Objectives Resolution is quoted in full later.

[4] C.A.P. Debates, V, No. 4 (March 10th 1949), p. 51

Dr. Mahmud Husain declared “the question is whether we propose to bring back morality to the sphere from which it has been banished—namely the political sphere.”[1]

The ‘Ulama on the other hand were of the opinion that the acceptance of the Sovereignty of God implied that the intention was to base the whole structure of law on the provisions of the *Qur'an* and the *Shari‘a*. To them God as Sovereign meant that man's position on earth was that of a Vicegerent *(Khalifa)* and thus man would only have freedom within the limits prescribed by the *Qur'an* and the *Sunna*, and once that had been established the State would be Islamic. For those who were conscious of the intricacies of Muslim Law it also meant that the politicians at last had recognised the right of the ‘Ulama to frame a Constitution. The *Jama‘at-i-Islami* declared in their annual conference at Lahore 6th to 8th May 1949, a few days after the passage of the Objectives Resolution, that the internment of Maulana Maududi was no longer justified and appealed to the government for his release.[2]

The only people who did not take part in the general praise of the Objectives Resolution, quite understandably, were the minorities. Mr. B.K. Datta and Mr. Chattopadhyaya the Hindu members of the Constituent Assembly and both members of the Pakistan Congress objected to the Sovereignty clause. They asserted that if the Sovereignty belonged to God and not to the people of Pakistan the State envisaged would not be a democratic State.[3] A long discussion then ensued to assure the Congress and the minorities in general that their rights would be guaranteed. Dr. Ishtiaq Hussain Qureshi explained that the Islamic Principles were not in conflict with the United Nations Charter on Fundamental Rights.[4] Liaquat Ali Khan said that the Islamic Democracy was “distinguished from both the democracy of the West and the democracy of the Soviet Union; it was in fact more democratic than both.[5] A number of other assurances and explanations came from other Muslim Leaguers.

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[1] *C.A.P. Debates* Vol. V No. 4 (March 10th 1949) p. 51

[2] *Qarardad-i-Maqasid Key Ba'd Hukumat ki Nai Zimmadariyan* (Shu'ba-i-Nashr-o-Isha‘at, Jama‘at-i-Islami, Lahore, 1949) p. 2.

[3] *C.A.P. Debates* Vol. No. 2, p. 13 and No. 5 p. 89.

[4] ibid Vol. No. III p. 42.

[5] ibid Vol. V. No. 1 p. 3.

After the adoption of the Objectives Resolution, a committee was formed with a membership of 25 and with Maulavi Tamizuddin, the President of the Constituent Assembly, as is chairman to draw up in greater detail the principles of the Constitution. This Committee came to be known as the Basic Principles Committee. It is to this that we must now turn.

(iii) The Basic Principles Committee and the Board of Ta'limat-i-Islamiya

After the creation of the Basic Principles Committee its twenty five members met to decide what practical steps could be taken to draw up the basic principles of the Constitution. The Basic Principles Committee then decided to split up into three sub-committees to report (a) on matters regarding the Provincial and Federal Constitutions and their powers. (b) on franchise with special reference to the nature and structure of electorates in respect of provinces and minorities and (c) on the Judiciary. From our point of view, however, the decision to create a Board consisting of *'Ulama* and other experts on Muslim Law to discuss and refer to the Sub-Committee on Constitutions and Powers—matters arising from the nature of Islamic Constitution was the most important one. The powers of the Board were, however, limited in the sense that their position was merely advisory and they could only give opinion on matters referred to them by the Basic Principles Committee. The Board came to be known as the Board of *Ta'limat-i-Islamiya.* After the decision was reached to create this Board a committee comprising the Prime Minister, the Governors of East Bengal and Punjab, the Minister of Finance, Maulana Shabbir Ahmad 'Usmani and the President of the Constituent Assembly Maulavi Tamizuddin was formed to appoint the membership to the Board. The creation of such a Board had been suggested by Maulana 'Usmani only a few months earlier in the speech given at Dacca. Although the position of the Board was to be advisory, it appears that the *'Ulama* were generally satisfied with the decision to appoint the Board. It is however, strange that the *'Ulama* did not protest about its membership when it was announced. Apart from 'Usmani himself, a *Shi'a 'Alim* and two others the Board was thoroughly secular. In other words it seems that the Board was a compromise and the appointed members seemed to have been chosen for the purpose of dividing and weakening it. The following appointments were made :--

1. Maulana Shabbir Ahmad 'Usmani
2. Maulana Muhammad Shafi[1]
3. Maulana Sayyid Sulaiman Nadvi[2]
4. Professor Abdul Khaliq[3]
5. Mufti Ja'far Hussain[4]
6. Dr. Hamidullah[5]
7. Maulana Zafar Ahmad Ansari *(Secretary)*[6]

(1) Maulana Muhammad Shafi was the leading follower of 'Usmani and his right hand man. He was one of the important authorities on *Hadith.*

(2) Maulana Sayyad Sulaiman Nadvi, acknowledged as the leading authority on Muslim Law and History, was the only non-Pakistani member of the Board. He was invited from India to come and serve on the Board. Although he accepted the position he was not able to come from India until 1950.

(3) Professor Abdul Khaliq was an academician and an authority on the Arabic Language. He had been a Professor of Arabic at the Presidency College Calcutta. Letter he was elected a member of Legislative Assembly of East Bengal.

(4) Mufti Jaffar Hussain was the only *Shi'a alim* on the Board. Althought Pakistan is predominatly *Sunni* it was imperative to give to the *Shi'a* group some representation. *Shi'ite* political theory is based on hereditary legitimacy of the *Khilafa.* However, until their twelfth *Imam* arrives to re-establish the *Imamate,* the *Shi'a* community is willing to work under any form of Constitution provided they as a community are not maltreated or discriminated against, and their personal status law is maintained. Thus it appears that the Mufti's presence in the Board was mainly for the purpose of making sure that those matters of personal status law were not interfered with.

(5) Dr. Hamidullah's appointment was probably to add the respectability of Western knowledge to the Board. He is the author of a very important work on Muslim International Law "Muslim Conduct of State". He is at present teaching at the Sorbonne.

(6) Maulana Zafar Ahmad Ansari, formerly Office Secretary of All India Muslim League and at the time the Secretary of Pakistan Muslim League. He had recently come under the influence of Maulana Maududi. Ansari was one of the few men of religion who had supported the policies of the Muslim League in respect of the creation of Pakistan before the Partition. Ansari was presumably appointed because of his experience in secretarial jobs.

(a) The Head of the State

The Board based their views on the matters regarding the office of the Head of the State upon the traditional Islamic political theory. It is interesting to see that at no time did they make any departure from the tradition and drew entirely on medieval views of *Khilafa*. The members of the Board state very clearly that they are contemplating the recreation of the classical *Khilafa*.

"The method adopted for performing these multifarious functions is that the Musalmans elect the wisest and most God-fearing person from amongst themselves as their Head to discharge these duties and responsibilities on their behalf and in consultation with pious and sagacious members of the *Millat* enjoying their confidence.[1]

The discourse that the Board submitted began with the qualifications of the Head of the State, and these were based on traditional theory. They included requirements such as having a sound mind, not being totally deaf, blind or dumb, being wise and sagacious, being composed and poised and not being under the control of a foreign power. All these qualifications occur in detail in Al-Mawardi's *Ahkam-asSultaniya*.[2] Over and above those mentioned by Al-Mawardi the Board prescribes that the Head of the State should be a Muslim. This apparent addition is not really an innovation because it was taken for granted by the writers such as al-Mawardi that the *Khalifa* of Islam would be a Muslim. He could have been none but a Muslim if he was to work for the glory and consolidation of Islam, propagate virtues and eradicate vice as prescribed by Islam. Above everything else the medieval philosophers were after all endeavouring to draw up the qualifications of the *Khalifa* of Islam. Therefore, to them it was not necessary that his religious affiliations be mentioned specifically. The need for specifying that the Head of State has to be an adherent of the religion of Islam only arose when the modern notion of the separation of religion and State came into being and also because the widely accepted concept of giving complete equality to religious minorities in a modern State had to be considered. Another qualification which is not included in the main body but is mentioned in passing is that the Head of the State has to be the citizen of the State. The fact that this is not mentioned as a qualification brings out the inability of the 'Board' to make any major departures from the classical theory. And the fact that it was mentioned at all signifies that the citizens of Pakistan and their *Amir*, are different from Muslims in other Islamic States. Thus the report admitted that the whole of the Muslim community no longer forms a *Millat, Jamiʿa* or *Umma*. It also admits that the institution of *Khilafa*, in its modern national setting, would not be a universal office, bringing the whole of the Islamic world under one political and religious authority, but the Islamic community would be distributed in different nations each having its own Head of the State, and thus basically separate and distinct from one another. They were in this way admitting Ibn-Khaldun's view that it is possible as well as permissible to have more than one *Khalifa* in Islam existing at the same time in different parts of the world, directing and guiding the community of believers.[1]

The ideological State, the Board conceived, was not to be dissimilar to Soviet Russia in that those people who subscribed to its views and ideology were to be responsible for policy making.[2] They envisaged a complete unification of 'Church' and the State. The view that religion and the State are two distinct faculties of man's life on earth was un-Godly and un-Islamic to them. This meant that the political activities of the non-Muslim minorities in the State would be very restricted. Women were given the right to vote but the office of the Head of the State was denied to them along with members of the minority communities.

(b) Method of Election :

The method of election of the *Khalifa* in the classical theory is based upon the mode of election of the first four

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[1] *Report on Constitutions Appendix I, containing Views of the Board of the Talimat-i-Islamia on certain items referred to them by the Sub-Committee on Federal and Provincial Constitutions and Distributions of Powers.* Hereinafter refered to as the *Views of the Board* p. 65.

[2] Haroon Khan Sherwani. *Studies in Muslim Political Thought and Administration* (Ashraf, Lahore, 1959) pp. 116-117.

[1] See Anwar Saeeda. *Political Philosophy of Ibn Khaldun* (M.A. Dissertation Punjab University 1962) p. 29.

[2] *Views of the Board* op. cit., p. 58.

Caliphs of Islam. Abu Bakr the first *Khalifa* had taken office after 'Umar as a member of the community had suggested his name and taken oath of allegiance to him. He was followed by other people who took *Bai'a* (oath of allegiance). The election of the second *Khalifa* 'Umar came about after his name was suggested to the community by the first *Khalifa*. The Third *Khalifa* 'Uthman was elected by a body of the influential members of the community who had been asked by the second *Khalifa* to elect one from among them. This was followed by the community offering their allegiance. From these instances the theorists and legists have concluded that the legitimacy depends on the fact that the important or pious members of the community should be willing to accept his Headship. The Board was of the opinion that modern institution of election would amply satisfy legitimacy. But they suggested that the *Umma* should first elect an electoral College constituting the most pious and learned and this body should then go on to elect the Head of the State by a process of elimination.[2]

This body of the pious and the learned were also empowered to remove the Head of the State basing their opinion on the maxim that a body which can do, can also undo. But it was made clear that removing the Head of the State would not be a matter merely of losing confidence but a strict legal affair and would only be brought about if the Head of the State either loses the essential qualifications or fails to conduct the affairs of the State in strict accordance with the spirit of Islam.

"If his *(Amir's)* conduct of the Government business geneally and the measures adopted by him are considered to be detrimental to the best interests of the country or *Millat* and the members voting for his removal declare it on oath that in their well considered opinion the continuance of reins of government in his hands is likely to prove a grave menace to the State or the ideology which it stands for"[1] he can then be removed.

(c) The idea of Contract :

The Board suggested that the Head of the State should take an oath of Office and the form of this oath they also prescribed.

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[1] *Board's Views* p. 65.
[2] ibid p. 63.
[1] ibid p. 64.

From this arises a strict idea of contract. This contract seems to be based as much on the political ideas of Hobbes and Locke as on Islam. The idea seems to be that there is a contract between the Head of the State and the *Umma* through its representatives. It is only after the Head of the State takes an oath to uphold the Constitution that the representatives offer their allegiance. If at any time the Head of the State fails to abide by the contract either through his losing the qualifications or through actions the contract can be revoked. The *Umma* thus, once more becomes free, to create a fresh contract with another person.

(iv) The Sub-committee of Constitutions and Powers.

When the views of the Board went to the Sub-Committee of Constitutions and Powers they did not find sympathy there. The Sub-Committee's proposals were in no way parallel to the views of the Board, although in its own report almost all the provisions suggested by the Board were dropped the Sub-Committee was polite enough to attach the views of the Board to its own proposals and left the final decision to the full Basic Principles Committee.

The Sub-Committee proposed a parliamentary form of government as opposed to the presidential form suggested by the Board. The Board had been of the view that presidential form was more in accordance with Islam. The Head of the State was to be elected by the Central Legislature for five years rather than life. He was to act according to the advice of his ministry except under special circumstances e.g., when acting under emergency powers or supervising elections.[1] The Sub-Committee also disagreed with the notion of Contract and said that the Head of the State should take an oath of office pertaining to allegiance to the Constitution of Pakistan. They also suggested that he should take another oath of office of secrecy.[2] The Head of the State was to appoint as Prime Minister a person who in his opinion commanded the confidence of the Legislative Assembly. Other ministers were then to be appointed on the recommendations of the Prime Minister. They were hoping to create a Head of the State who would be a nominal head and would stay above and out of practical politics.[1] It is clear from this that the SubCommittee had the British Constitutional System before them as an ideal rather than Islam. So much then was their faith in the Western concepts that they suggested that the Head of the State should be above law and should not be answerable for any of his acts in a court of Law.[2] In Islamic Political Theory the Head of the State has always been considered as a part of the *Umma* and thus as much subject to the *Shari'a* as any other member of the community.

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[1] *Report on Constitutions and Powers*. pp. 8, 9, 10 and 30.
[2] ibid p. 9.

The Sub-Committee also ignored the Board's recommendations regarding the Committee of Experts on *Shari'a*.[3] This was a very important issue in the eyes of the *'Ulama* because if the Sovereignty over the State lay with God and the position of man on earth was merely of his Vicegerent, power of interpretation of law could only rest with those among the *'Umma* who understood the intricacies of Islamic Law namely the *'Ulama*. Under these circumstances the interpretation of law could not be left to those who were not motivated by Islam and were ignorant of the teachings of the *Qur'an* and the provisions of the *Hadith*.

(v) The Interim Report and the 'Ulamâ's Reaction

After India had promulgated her Constitution in January 1950 the press in Pakistan began to get very nervous and started to blame the Constituent Assembly for deliberate dilatoriness. Three years had already passed without any frame work of the Constitution having been worked out. It was thus under a great deal of political pressure that the Basic Principles Committee prepared the Interim Report. The report was prepared in a hurry. Two of the Sub-Committee's (Franchise and Judiciary) had not completed their reports yet. The full Basic Principles Committee had only had the proposals of the Board of *Ta'limat-i-Islamiya* attached to the recommendations of the Sub-Committee on Constitutions and powers before them.

The Interim Report was a cross between the 1935 Act and the Indian Constitution prefaced by the Objectives Resolution and appended by the suggestion that all Muslims should have a religious education. The report was quite understandably

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[1] Report on Constitutions and Powers. p. 14.
[2] ibid p. 11.
[3] ibid p. 9.

found to be inadequate and disappointing by the men of religion and the onslaught of criticism from them was instantaneous. Maulana Maududi lead the way, and spoke at a public meeting in Lahore, before a large gathering on the 14th of October, 1950.

In his speech he postulated six principles of a State based on Islam, and then set out to criticise the Interim Report by showing that none of these principles were incorporated in the Report. These basic Principles according to him were :—

(1) That Allah should be accepted as the final authority. "In a state in which God's word (The *Qur'an*) is not the ultimate authority that State cannot be Islamic."[1]

(2) That the law of the land should be based on the provisions of the *Shari'a*.[2]

(3) That any existing laws found to be in conflict with the *Shari'a* should be abrogated and no such new laws should be promulgated.[3]

(4) That the rights dealing with honour, person and property are irrevocable. The institution of Preventive Detention pre-supposes that these rights emanate from the State, while Islam asserts that they are bestowed on man by God and thus are under no circumstances to be interfered with.[4]

(5) That in the eyes of law all individuals are equal and are answerable for their acts (both the rulers and the ruled) to God.

(6) That the State should establish and encourage *Ma'ruf* (righteousness) and destroy *Munkar* (wrong).

Examining these principles, he pointed out firstly, that the report did not accept that Sovereignty lies with Allah nor does it suggest that the law of the land will be based on the *Shari'a*. Secondly, it does not give out that the existing un-Islamic Laws will be declared null and void and new laws will be created in accordance with the *Shari'a*. Thirdly it accepts that the *Amir* or the President will be above the Law and not subject to the Law of Allah like every other individual member of the *Umma*. Fifthly the report provides that the government will have the power to introduce Preventive Detention, implying thereby that rights of the individual emanate from the State rather than from God. He was also critical of the fact that the Head of the State as well as other high officials of the State have been asked in the Report to take an oath to be faithful to the Constitution rather than to God. This he found objectionable both from the constitutional as well as personal point of view. Thus for Maududi and most other *'Ulama* the whole foundation on which the edifice of the Report was built was un-Godly and un-Islamic.

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[1] Abul A'la Maududi "*Dasturi Safarishat par Tanqid Islam aur Jamhuri Nuqta-i-Nazar say*" (Jama'at-i-Islami Lahore, 1950) pp. 12-13.
[2] ibid p. 13.
[3] ibid p. 14.
[4] ibid p. 14.

It was mainly through the efforts of the *Jama'at-i-Islami* and some members of the *Ta'limat-i-Islamiya* Board that a Convention of the *'Ulama* met at Karachi to plan[1] their own suggestions regarding an Islamic Constitution on 21st of January 1951. Within four days they came to agree on 22 principles which they thought must be incorporated in a Constitution to make it Islamic. The convention was called firstly for the purpose of announcing an agreed position to the Interim Report and secondly to show the secularists that the *'Ulama* although of different views could agree upon general principles regarding the Constitution.

Thirty-one *'Ulama* took part in these deliberations. Apart from Maududi and four members of the *Ta'limat-i-Islamiya* Board representation was given to *Shi'a*. *Wahhabi*, various *Sunni* denominations and other schools of thought. Maulana Sayyid Sulaiman Nadvi acted as the Chairman. The suggestions were sent to the Constituent Assembly where they went before the 'Suggestions Sub-Committee' specially created by the Basic Principles Committee to examine public criticism on the Interim Report to be examined by the Sub-Committees along with suggestions from the public.

It appears from subsequent deliberations of the Constitution makers that *'Ulama's* Convention and the ability of the *'Ulama* to declare an agreed formula had impressed them to a great extent. The Suggestion Sub-Committee called upon

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[1] See Appendix 2.

Maulana Sayyid Sulaiman Nadvi to come in person to the Sub-Committee meetings to elaborate on certain views of the *'Ulama*. Although he was not an official member of the Sub-Committee his views seem to have been incorporated in the Suggestions Sub-Committee Report.

Before a full consideration the Sub-Committee eliminated seven of the twenty two suggestions because they lay outside the scope of their terms of reference. Four more were dropped with the approval of Maulana Saulaiman Nadvi. This meant the 15 of recommendations finally came to be considered.

The *'Ulama* gained on the requirement that the Head of the State be a Muslim and that the function of the *'Ulama* be recognised,[1] and also accepting that the oath of office shall include that the Head of the State will.

> "......endeavour to fulfil the obligations and duties enjoined by the Holy *Qur'an* and the *Sunna*, and to perform his duties in such a manner that the requirements laid down in the Objectives Resolution and the Directive Principles of State Policy[2] could be fulfilled in the best possible manner."[3]

The Sub-Committee also agreed that a law which is in conflict with Islamic Principles should be declared null and viod. It said:

> "If not less than one-tenth of the Muslim members of the House raised objection that any Bill or part thereof is opposed to the *Qur'an* and the *Sunna* after the second reading is completed, the Speaker should as early as possible refer the Bill or the part to which objection is taken, to the Standing Committee of *'Ulama*, elected by the Muslim members of the legislature, for this purpose, for their advice. The Standing Committee of the *'Ulama*, should send their advice to the Speaker of the House concerned within seven days of the receipt of the reference ......the decision of the House in this respect should be

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[1] *Report of the Sub-Committee to Examine Suggestions Received from the Public on the Basic Principles Committee* (Interim Report) p. 25.

[2] Directive Principles of State Policy were drawn up by the Suggestions Sub-Committee as the guiding principles to be always considered by the State. These were later included in the 1956 constitution.

[3] *Suggestions Sub-Committee Report* p. 58.

final for all purposes so as to include the jurisdiction of the courts."[1]

When these recommendations of the Suggestions Sub-Committee reached the full Basic Principles Committee they found a sympathetic consideration. The Basic Principles Committee accepted the major part of these recommendations. For instance they accepted that *'Ulama* should be given the authority to decide whether or not a law was Islamic but suggested that the Committee of *'Ulama* should be appointed by the House and should have the same life span as that of the House. It should consist of five members who may or may not be members of the legislature and that there should be only one Committee of *'Ulama* for the central legislature elected by a joint session of the two Houses of the legislature.

(vi) The Nature of the Legislature and the 'Ulama

Although religion has been considered the only basis of Pakistan by the Muslim League, the subsequent history shows that in regard to the nature of the legislature other political matters had considerable influence on the views of the makers of the Constitution. These ultra-religious issues continue to influence politics in general and it is mainly due to these that Pakistan has been divided into two.

Medieval Muslim writers have mainly been concerned with the powers and functions of *Khalifa,* and Legislature as we know it in the Western sense had never been in existence in the Muslim world. Its evolution, wherever it has come into being has been under the direct influence of the West. The legislature assumes that the Sovereignty lies in the hands of the people and that through their elected or appointed representatives they have, firstly the right to formulate the laws to govern themselves and secondly, to tax themselves in order to meet the expenditures of conducting the matters of State.

Islam, on the other hand assumes that God has directed man both in the affairs of this world as well as in the life hereafter through prophecy. The message included in the *Qur'an* carries the outline of a complete code of life. The outline created by the *Qur'an* and *Sunna* becomes the immutable law of Islam. This law cannot be changed by a body of men because it does not lie within the power of man to make changes in

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[1] *Suggestions Sub-Committee Report* p. 41.

that law. The activity of a corporate legislature in a modern Islamic State would thus be restricted in its activities. If the basic Laws of Islam, *Nasus* (injunctions of the *Qur'an* and the *Sunna)* can be termed Constitutional Law, then the Constitutional Law, would become an unchangeable base. The legislature would be free to legislate in matters outside it in the spirit of the *Qur'an,* in other words they would be free to effect *ijtihad.*

The concept of electing by popular suffrage those who oversee the recommendations in matters regarding *ijtihad* has never been opposed by the *'Ulama* in Pakistan because the community has been regarded as the Vicegerent of God and thus the real *Mujtahid.* The *'Ulama* have thought that to elect representatives to suggest *ijtihad* to the *Amir* who symbolises the Vicegerency of the community is not un-Islamic. The difficulty however may arise when the community does not elect in the true spirit of Islam and the people who are sagacious and wise and motivated with the true spirit of Islam are not elected because the community itself was motivated through political forces other than Islam.

The Constituent Assembly of Pakistan, it would be clear from the ensuing discussion, was not concerned with the religious questions relating to the Legislature, but was predominantly motivated by factors which were completely outside religion. It is extremely necessary to give an account of these political forces because, although the *'Ulama* were concerned with the powers and qualifications of the *Amir* they did not take an equal care in providing a solution for the composition of legislature which the Islamic Constitution, they had in mind, would bring into being. On the one hand it showed the failure of the *'Ulama* to realize the importance of the matters involved in the nature of the Legislature and on the other hand it showed that the Muslims could be divided and concerned with matters of representation which lies completely outside the scope of Islam. It also showed that political factors which would be completely outside Islam could divide a nation and Islam could stand impotent and helpless.

I am going to discuss this political matter at some length to illustrate how Islam failed to provide a solution in these and many other matters arising from political motives. The problem was basically this:

The Punjabi politician was worried in case Bengal was given an overall majority in the Central Legislature. The Bengali politician was of the view that considering that Bengal's population was more than the whole of the Western Wing they should have a majority in the Legislature. The smaller provinces like N.W.F.P. Sindh and Baluchistan held the view that if they got their share of representation by population percentage their regional interests would suffer at the hands of the two majority provinces—Bengal and Punjab. In other words there was an atmosphere of general mistrust among the provinces. This meant that the general fear was that even Islam and the Islamic Constitution they were creating would not be able to remove the political differences which would arise due to a system of representation which gave greater representation to certain regions over the others in the legislature. For these and other reasons Constitution-making became an interminable trial for the makers. Sir Zafarullah Khan, the Minister of Foreign Affairs, and a member of the Constituent Assembly admitted this in a speech delivered to students in London. He said:

> "The problem of Constitution-making has become the nightmare of Pakistan, something which is blocking up everything of positive character and giving rise to the worst form of political rivalry and political jobbery."[1]

Every member of the Constituent Assembly was agreed that Pakistan, in view of its geographical division, should be a Federation. A Federation, according to one of its most important writers, establishes "an association of States so organized that powers are divided between the Central Government which in certain matters, for example the making of treaties and coining money—is independent of the associated states, and on the other hand state Governments which in certain matters are, in their turn, independent of the central Government."[2] In the formation of a Federation, it is then necessary that the government of the Units give up certain powers to the Central Government, which they will create, but which will have more

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[1] The Dawn, Karachi, August 30th 1955.

[2] K. C. Wheare *Federal Government* (Oxford U.P. London 1956) p. 2.

authority than their own Governments. In Pakistan, the Constituent Assembly was a national institution but its members closely connected with interests of their own provinces could not agree upon what powers they were willing to surrender to the central authority. Pakistan was created under high ideals but as the process of constitution making progressed the individuals became more and more conscious of earthly political matters. The other problem, apart from that of the nature of powers to be surrendered to the Centre was a mistrust of the dictum that majority rules, and from these problems arose the question of representation. Although their motives were different each province was trying to turn the political tide in such a way as to have a higher number of representatives at the Central legislature.

The Basic Principles Committee's Interim Report 1950 had provided that:

(a) "there should be a Central legislature—the House of Units representing the legislatures of the Units and the House of the People to be elected directly.

(b) "In the Upper House equal representation should be given to each state.

(c) "in the Lower House each Wing should be treated on the basis of parity."[1]

The Basic Principles Committee Interim Report had come under serious criticism both in Bengal and from the Bengali members at the Constituent Assembly. They had opposed it "on the ground that it did not povide the province with an overall majority on the basis of population.[2] The *Pakistan Observer* (Dacca) wrote at the time "......the citizens of Dacca and most East Pakistan were shocked when the local dailies carried to them the full text of the Basic Principles Committee Report...... They came from all walks of life, high officials, professors, teachers, lawyers, students, medical men, police personnel etc. Their first shock was that of bewilderment".[3]

A bitter controversy followed with the consequence that Liaquat Ali Khan, the Prime Minister had to call upon the and many other matters arising from political motives. The problem was basically this:

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[1] *Report of the Basic Principles Committee* 1950 Part III Chapter 2.

[2] G.W. Chaudhri, *Constitutional Development of Pakistan* (Longman Green. Karachi, 1950) pp. 108-109.

[3] Pakistan Observer (Dacca) October 7th, 1950.

[4] Pakistan Times, Lahore, November, 22nd 1950.

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[4] Pakistan Times, Lahore, November, 22nd 1950.

Committee on November 21, 1950 to reconsider their decision and make such changes as would be acceptable to the people of East Bengal.[4] The amendment did not, however, come until the second draft in December 1952.

The draft established a parity between the two Wings of Pakistan rather than the provinces in both Houses.

Although it was claimed that this draft would bring about a constitutional balance of power and responsibility between the two Wings of Pakistan "it was put to even a more varied criticism. This time the criticism came from both the Wings. This form of parity was unacceptable to the Bengalis because it would make West Pakistan, with the aid of one or two Bengalis to turn the tide in their favour. Moreover it would only make it possible for East Pakistan to have an effective voice in the Central Legislature if both the Hindus and the Muslim representatives always formed a common ground. The West Pakistani press was of the opinion, that the parity formula would result in the domination of one province over four others.[1]

The next attempt to bring about a mutually acceptable formula came from Muhammad Ali (Bogra) (Prime Minister from April 1953 to August 1955) in May 1953. This was designed so that none of the Wings would have effective power in the Central legislature. The plan was that in the Upper House each of the major provinces would be represented on the basis of parity. The House would comprise 50 members, 10 from each of the four major provinces, Bengal, Punjab, N.W.F.P. and Sindh. The remaining ten seats were then divided between the princely states, Baluchistan and Karachi Federal Area. The Lower House was to have 300 seats distributed on the basis of population, East Pakistan having 165 and West Pakistan sharing 135 among its provinces. This distribution made sure that the two Wings in a joint sitting would have 175 representatives each.

Before the Constitution was passed the provinces of West Pakistan came to be consolidated into One Unit, and therefore it was understood that the need for a bicameral legislature was

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[1] The daily *Nawa-i-Waqt*, Urdu, Lahore, Editorial, December 23rd, 1952.

no longer there. The Second Constituent Assembly thus agreed on creating a single House legislature at the Centre with a membership of 300 divided equally between the Wings. This was ultimately incorporated in the Constitution. The Constitution also specified that for the first ten years there should be 10 seats for women over and above the three hundred.[1]

Apart from these there were problems connected with the One Unit in West Pakistan which did not become readily acceptable to the West Pakistanis, the problem of Kashmir, resettlement of refugees which were still coming in large numbers from across the Indian borders, the language problem, the stoppage of irrigation water from India and the shortage of food. All these affected the actions and politics of the Pakistani politicians.

(vii) Anti-Ahmadiyya Controversy

The controversy against the Ahmadis began in Karachi and resulted in riots and disturbances in the Punjab in 1963. Because it was a religious controversy and some of the most important *'Ulama* were involved, the Central Government avoided any positive action until the conditions became very serious.

The Ahmadiyya claimed to be one of the newest of the Islamic sects. The Ahmadiyya follow Mirza Ghulam Ahmad (died 1906) of Qadian (now in East Punjab) who is said to have claimed prophethood as well as to be the promised Messiah. The Ahmadiyya had been the target of bitter attack from the *'Ulama* on the ground that Prophet Muhammad had been the last of the Prophets and therefore if any person claims prophethood after him he is outside the pale of Islam. The Ahmadiyya also rejected *Jihad bis Saif* the concept that war taken in furtherance of Islam is legitimate and believe that the time for *Jihad* as a concept of war is no longer applicable. This has also brought them into conflict with the *'Ulama* who were mostly anti-British and Congress-motivated before the Partition of India and were connected with the militant *Khilafat* Movement in the earlier decades of this century.

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[1] *The Constitution of the Islamic Republic of Pakistan* 1956, clause 44, sections 1 and 2.

The anti-Ahmadiyya movement in fact began as early as 1949 when (on May 1st) one of the erstwhile Ahrar leaders made his first suggestion that the Ahmadiyya should be declared a minority and its adherents in important government posts should be removed.[1]

The Ahrar was a politico-religious movement which, before the Partition had been an ally of the Congress. The Ahrar were noted for their spellbinding speakers and anti-Partition ideals.[2]

The agitation was in its early days led by the Ahrar but when other *‘Ulama* began to join in, it became more respectable and thus its support began to be more widespread. Maulana Maududi and his political party the *Jama‘at-i-Islami* seem to have stayed out of direct political action in the early days and according to Maududi himself supported the Ahrar policy only half-heartedly.[3]

The object of the campaign was to have the Ahmadiyya declared a minority and to have Zafarullah Khan, a prominent member of the Ahmadiyya and Foreign Minister of Pakistan, removed from the Cabinet. It was also demanded that the Ahmadiyya should be removed from prominent government positions because their loyalty was doubtful. Special meetings were held in the mosques and other public places and the masses were worked up by fiery speeches and resolutions. The leaders included two members of the *Ta‘limat-i-Islamiya* Board who attended the Muslim Parties' Convention which appointed an Action Committee to plan a militant programme of action. In its meeting at Karachi it was resolved that because the Prime Minister had failed to act on earlier resolutions declaring the Ahmadiyya a minority and had failed to remove Zafarullah Khan from his Cabinet, they will have to resort to direct action as the only way to have their demands accepted. And "since the demand for the removal of Sir Zafarullah Khan, the *Mirzai* (the Ahmadiyya) Foreign Minister, has not yet been conceded, the Convention demands the resignation of Khwaja Nazimuddin (the Prime Minister) so that the Muslims

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[1] The Pakistan Times May 2nd 1947.

[2] Wilfred Cantwell Smith, *Modern Islam in India* (2nd Ed., London 1946) pp. 297-302.

[3] *Punjab Disturbances, Court of Enquiry Report* p. 40.

of Pakistan should be able to follow and preserve their religious beliefs and Islamic tradition."[1]

The Court of Enquiry findings were that the Punjab Muslim League had taken an active role in creating and aiding these disturbances, and that the Punjab Government under the Chief Ministership of Mian Mumtaz Daultana was in many ways responsible for the situation. The Report said that the Punjab Education Department was giving subsidies to certain newspapers involved in the controversy and went on fanning the agitation during the days when they were receiving payments. The majority of the members of the Department of Islamiyat of the Punjab Government were prominent leaders of the agitation.[2]

In spite of growing unrest the Government did not take any positive action. The central government was too weak and the provincial government sympathised with the views of the *‘Ulama*. By now the city of Lahore had been completely lost to the rioters, there was looting and intimidation and murder of some Ahmadis. Civil government had ceased to exist. After the matters were completely out of hand Mian Mumtaz Daultana issued a statement to the effect that after peace was established he and his government would be prepared to meet the *‘Ulama* and place their demands before the Central govenment with the recommendation that they be accepted.[3]

A few hours after this statement was issued, the Central government authorised the Army Commander in Lahore to declare Martial Law and assume power. Martial Law remained in Lahore until May 1953.

These disturbances illustrated that on a small issue relating to religion the *‘Ulama* could still wield tremendous power and sway over the masses but it also destroyed the weight of the *‘Ulama's* opinion over more important matters among the Westernised politicians who still controlled the political power in the country. It took the *‘Ulama* some time to re-establish their position as supporters of the Islamic Constitution.

After the Martial Law some of the prominent members of the Ahrar and some prominent *'Ulama* including Maulana Maududi were arrested. A Martial Law court was established to try them. Maulana Maududi was sentenced to death for writing and publishing "Qadiyani Mas'ala" an article (Published March 6th, 1953). This sentence was later commuted first to 14 years and then to two years' imprisonment.

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[1] *Court of Enquiry Report* p. 131-132.

[2] *Court of Enquiry Report* p. 83.

[3] ibid p. 167.

(viii) The Hindu Reaction to the Basic Principles Committee Report.

The anti-Ahmadiyya movement created a void in the efforts of the *'Ulama* as a pressure group working for the formulation of an Islamic Constitution. While most of the important *'Ulama* including Maududi were imprisoned in the Punjab and their voice in favour of the Islamic Constitution was quietened the government at the Centre planned for an Interim Constitution. The plan was that an Interim Constitution be formulated to replace the 1935 Act and the Independence Act 1947. It was understood that this would be based on the Act of 1935 and would not include any Islamic provisions. This meant that the provisions based on the Directive Principles, acceptability of the *Shari'a* or the *'Ulama's* right to advise on the nature of the laws created would be set aside. It was on this matter that those not imprisoned began to voice their opinion and the *Jami'at-ul'Ulama-i-Islam* decided to act quickly. They resolved at a meeting in Karachi that the plan for an Interim Constitution be dropped and permanent Constitution based on the provisions of the *Shari'a* be created. It is significant that the arguments regarding the provisions of the Constitution were once more set aside and were once more, like those from 1947-49, replaced by the argument that there should be an Islamic Constitution. It is, however, not possible to find out how far the *'Ulama* were really instrumental in having the plan for Interim Constitution dropped.

At this stage the Constituent Assembly began to discuss the Basic Principles Committee Report. The Constituent Assembly's activities and debates received full reportage from the press. While those in favour of an Islamic Constitution began to press their point of view, the Westernising influences and the minorities came out with their full criticism. Mr. A.K.

Brohi, the Law Minister, was able to get through most of the provisions of the Basic Principles Committee Report.

From our point of view the points which came under discussion were firstly whether or not the Pakistan Constitution be called an Islamic Constitution; secondly whether or not the Headship of the State be reserved for a Muslim; thirdly whether or not Islam should be declared the State religion and finally who should be responsible for over-seeing that no laws repugnant to the *Qur'an* and the *Sunna* be promulgated, the two alternatives being a body of the *'Ulama* or the Supreme Court.

Among the Hindu members of the Constituent Assembly Mr. Bhupendra Nath Datta and Professor Chakrvarty were most vocal. They argued that the Islamic and the Parliamentary forms of government were irreconcilable and referred to the proposed Board of *'Ulama* as the 'Third House' which would prevent the introduction of a true parliamentary or democratic spirit in the working of the Constitution.[1] The fear that Pakistan would become a theocratic State was uppermost in their minds and therefore quite justifiably they were sceptical of the Islamic bias of the report of the Basic Principles Committee. They were also of the opinion that under such a Constitution all the minority groups would become second class citizens. The repugnacy clause (by which any law repugnant to the *Shari'a* would be declared null and void) also received prominence from eight members of the Congress party.[2] However, when the Opposition became certain that they would not make any substantial changes in the Basic Principles Committee Report they decided to walk out at the final vote.

After the failure of the Prime Minister to take immediate action in respect of the anti-Ahmadiyya agitation, he began to be blamed for many other political matters. After a year and a half of being in office he had not been able to have the Constitution framed, the country was in the midst of the worst food crisis and was generally facing an economic crisis because of the end of the export boom which the Korean war had brought about. At this stage (April 17th, 1953) the Governor

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[1] *Constituent Assembly of Pakistan Debates*, Vol. XV, No. 2, (October 7th 1953) p. 25 and p. 23.

[2] ibid Vol. XV, No. 2, October, 7th 1953 p. 28.

General had taken the decision to dismiss him and create a new Cabinet under Muhammad Ali (Bogra) who was at the time Ambassador in Washington. Although Bogra and his colleagues were able to get through a formula for presentation which became generally acceptable and were also able to manage substantial wheat aid from the U.S.A. the solution to the constitutional problem and the other economic problems was not forthcoming. The problems arising from provincialism and Kashmir were also becoming magnified and the constitutional machinery had completely broken down. At this stage the Governor General took another important decision. He declared a state of emergency in the country and dissolved the Constituent Assembly. The plan was then to create a Commission to frame the Constitution but the Federal Court ruling that although the Governor General had the Constitutional power to dissolve the Assembly he should create another Assembly and that the creation of a Commission was not legal, decided that another Constituent Assembly be called.

Now that the Constituent Assembly had been dissolved the Governor General was free to make controversial decisions. The plan for unifying the whole of the West Pakistan into one political unit came through. There had been dissatisfaction with the working of the Federal system in West Pakistan. The existence of separate legislatures in the provinces had given "opportunity for local politicians to engage in intrigue, chicanery and outright coercion."[1] However, there was more opposition than expected and a number of political manoeuvres followed, among them the dismissal of Pirzada Abdus Sattar, Chief Minister of Sind and the appointment of M.A. Khuro in his stead. Finally the Province of West Pakistan came into existence on October 14th, 1954. The province was created to bring about a situation in which the problems of representation between the two Wings would be solved. From the point of view of administration the previous divisions it was said, had also been wasteful.

(ix) The Islamic Constitution

After the dissolution of the first Constituent Assembly a second was created which framed the Constitution of the

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[1] Keith Callard, *Pakistan a Political Study* (Allan and Unwin, London, 1957) p. 186.

Islamic Republic of Pakistan. The ground work done by the Basic Principles Committee was, however, used to the fullest extent, therefore, it cannot be said that the work of the first Constituent Assembly was wasted. In fact the Constitution was rushed through the Assembly with little change or improvement of the Basic Principles Committee Report. The Objectives Resolution was retained as the preamble, and the Directives Principles of State Policy which had been a part of the Basic Principles Committee Report were also retained in entirety. In the Constitution they were stated under part III. Its nine clauses were to be the guiding principles for future governments. The State was to endeavour to strengthen bonds of unity among Muslim Nations,[1] it was to enable the Muslims of Pakistan to order their lives according to the *Qur'an* and the *Sunna* by providing facilities whereby they may be able to understand the meanings of the Holy *Qur'an* and the *Sunna:* to *promote observance of Islamic Moral Standards* and to secure organizations of *zakat, waqfs* and Mosques.[2] The clauses, 26 to 31 dealt with provisions for communal harmony, safeguarding rights of minorities, providing equal opportunity, employment, and provision of basic necessities of life to each individual. Unlike the Basic Principles Report, here the Directive Principles of State policy became prefaced with a clause that in case of the failure of the State to observe these, the matters arising from them will not be enforcible in Law Courts.

> "The State shall be guided in the formulation of its policies by the provisions of this part, but such provisions shall not be enforcible in any court."[3]

The Constitution provided that the Head of State be a Muslim.[4] and that:

> "The President shall set up an organization for Islamic research and instruction in advanced studies to assist in the reconstruction of Muslim Society on a truly Islamic basis."[5] and again,

> "No new law shall be enacted which is repugnant to the

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[1] 1956 Constitution clause 24.
[2] Ibid clause 25
[3] Ibid Part III clause 23 (2)
[4] Ibid Part IV clause 32 (2)
[5] Ibid Part XII clause 197 (1)

injunctions of Islam as laid down in the Holy *Qur'an* and the *Sunna*,……and existing laws shall be brought into conformity with such injunctions".[1]

The Constitution also provided that the President shall appoint a commission to look into such existing laws as are found repugnant to the injunctions of Islam and give a report. This report was then to go to the National Assembly who "……after considering the report shall enact laws in respect thereof".[2] It was also stipulated in the same clause that nothing in this clause would effect the status of the non-Muslims residing in the State.[3]

The Constitution did not create a body of *'Ulama* to review laws to see whether they were Islamic or repugnant to Islam. This matter was left to the Supreme Court. Any citizen had the right to question any law made by the legislature. The Court could then review it and declare it unconstitutional in the same way as the American system gives its Supreme Court the power of Judicial Review.

It was in this way that *Qiyas* (opinion of jurists and judges) was given predominance over *Ijma'* (consensus of opinion by the learned representatives of the *Umma)*. How far this was in consonance with the traditional theory is doubtful. Traditionally *ijma'* has always been considered more final than *qiyas*.

(x) "Theocracy", "Democracy" and "Theo-democracy"

The most outstanding feature of the creation of the Islamic Republic of Pakistan was that it sought to base a Constitution on the Islamic Principles as its adherents understood it. The preamble of the Constitution which had appeared as early as 1948 in the shape of the Objectives Resolution had recognised the sovereignty of God and declared that all human authority must be subservient to God's.

From this arises one of the most important problems of Islamic political thought. Does the idea of the Sovereignty of God which the Constitution recognised come into conflict with the idea of popular Sovereignty which is one of the most essen-

[1] Ibid Part XII clause 198 (1)
[2] Ibid Part XII clause 198 (3)
[3] Ibid Clause 198 (4)

tial hallmarks of democracy? G.W. Chaudhari[1] asserts that Pakistan under the 1956 Constitution was a theocracy in as much as it recognized the Sovereignty of God. However, he says "There are no special agents of God recognized and hence theocracy in the ordinary sense has no place in Islamic Statecraft. The right to rule is not necessarily associated with any special form of Government; either one form or another may be assumed provided it be such as to ensure the general welfare." Moreover, it may be argued, the Sovereignty to God ensures that civil authority must not be subservient to the advantage of one or of a few, for it is established for the good of all; and if those who are in authority should rule unjustly; or if they should err through arrogance or pride; if their measures should be injurious to the people—then let them know that hereafter an account must be rendered to God".[2]

In this rather simple statement of Islamic attitude there is nothing that may be incompatible or out of tune with the spirit of democracy as we know it. The 1956 Constitution was finally based on simple principles of this nature except the provision that the Supreme Court would have the power to declare a law, made by a majority of representatives of the community and assented to by the *Amir*, null and void, on a plea by any citizen that it was against the spirit of Islam. Our concern here, basically is whether or not the creation of this third house would be considered democratic? One must not forget that the Constitution of any nation is in fact an agreed list of principles by the majority of its people, setting limits to the powers they themselves command. If the Pakistani nation, by the majority of its representatives adopted the principle that they would only have freedom in matters of framing laws within limits prescribed by God in a certain book than according to any definition the outcome would be democratic.

A European observer instinctively feels that the concept of a nation and State whose legitimacy depends on religion is an anomaly, and a reactionary anomaly. For Muslims, however, Islam has always been a socio-political religion. It has been a

[1] G. W. Chaudhari *Constitutional Development in Pakistan* (Longman, Karachi, 1959).
[2] Ibid p.52

single indivisible reality. Thus when the choice came the Indian Muslim rejected independence under a secular State of India and chose an entity through which they would be able to reassert the principles incorporated in the *Qur'an.*

Leading spokesmen for an Islamic State in Pakistan have throughout asserted that the Islamic system does not need to be, and in fact cannot be, a theocracy in the sense of rule by a priestly class. Men of such varied opinions as Liaquat Ali Khan, and Maulana Abul A'la Maududi have been anxious to prove this point. Liaquat Ali Khan had said, "Islam does not recognize either priesthood of any sacerdotal authority; and therefore, the question of theocracy simply does not arise in Islam."[1] Maulana Maududi also speaks in the same strain when he says that "......A theocracy is a State run and overlorded by the clergy and because Islam is, by its very nature against such an institution the Islamic State in which we accept the Sovereignty of God as a source of law is not theocratic but theo-democratic."[2] He suggests the term theo-democratic because although there are restrictions on man as to the divine limits on the activity of man in regard to law making, these limits are accepted by the ***Umma*** by their acceptance of the ideology of Islam. Dr. Umar Hayat Malik, a prominent member of the Constituent Assembly and an intellectual, also endorses this view. He said in the Constituent Assembly"......it will be a limited democracy. The people will have some power but they will not have all the power......certain things will have to be resolved by God and are in his own personal sphere. The remaining sphere has been left to the people to deal with. The principles of Islam and the Laws of Islam as laid down in the *Qur'an* are binding upon the State. The people or the State cannot change these principles or these laws......but there is a vast field besides these principles and laws in which people will have free play......it might be called by the name "theo-democracy", that is democracy limited by word of God, but as the word "theo" is not in vogue so we can call it by the name "Islamic Democracy."[3]

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[1] Quoted from M.M. Siddiqui *Islam and Theocracy* (Lahore) p. 31.

[2] Abul A'la Maududi *Islamic Law and Constitution* (Islamic Publications, Lahore 1960).

[3] *Constituent Assembly of Pakistan Debates* Vol. V. No. 5 (March 12, 1949), p. 78.

(xi) The Outlook

The Parliamentary form of government created by the Islamic Constitution of Pakistan worked rather precariously due to the fact that it failed to provide for the basic needs of a new country i.e., political stability. The activities of the politicians were directed towards making personal riches and political parties did not exist in the true sense. They were only Parliamentary factions formed from time to time for the purpose of political gains. The Muslim League had been by now thrown out of power, both in East and West Pakistan. The Republican Party created out of existing members of the West Pakistan legislatures came into power in the West under Dr. Khan Sahib who was assassinated soon afterwards. Governments began to topple one after another when politicians changed sides as political manoeuvres. In two years the country's reserves went down to a most dangerous level. At one stage a political party began to recruit armies.[1] It was in these circumstances that Martial Law was declared by President Iskandar Mirza and Field Marshal Ayub Khan was named as the Martial Law Administrator. Soon he was to take the reins of his country into his own hands, in his own words to "clear up the mess in which the politicians had left the country." It is finally in 1962 that a new Constitution was given to Pakistan by the Martial Law Administrator. This was the end of yet not fully mature democratic institutions and brought in an era of a type of colonial rule in the country.

Constitutionally speaking one thing was significant in the abrogation of the 1956 Constitution. If it can be said that the 1956 Constitution was Islamic then it was obvious that it did not work and if it did not work can it be said then that Islam as a Constitutional force and a political system had spent itself and therefore it had lost its validity in the twentieth century. An ardent spokesman of the 1956 Constitution Mr. A.K. Brohi at one time Law Minister holds that it is not so and that the

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[1] Khan Abdul Qayyum Khan built the 60,000 strong Muslim League National Guards. Carrying rifles they began to parade the cities and hold public meetings. The then government then had to ban the wearing of uniforms and carrying of arms by associations or individuals. *See* Khan, Muhammad Ayub, President of Pakistan "*Friends not Masters*" (Oxford U.P., London 1967). p. 57

Constitution was never given a chance to work. No elections took place under the Constitution and therefore to say that it failed and that it was against the genius of the people is not justified.

The creation of the One Unit in West Pakistan had solved some problems of representation and provincialism within its boundaries momentarily but it created two units on either side of a balance precariously holding each other in position. Although the argument about the nature of the Islamic Constitution had somewhat lessened under Ayub Khan's government, realising the precarious situation and relationship between the two Wings he did not dissociate his policy from Islam. The Constitution created by him retained some of the Islamic provisions of the first Constitution, although no authority on Constitutional Law would call the Constitution Islamic.

Not unlike the 1956 Constitution the Ayub Constitution of 1962 asserts the Sovereignty of Allah, but the phrase of the Objectives Resolution "within the limits prescribed by Him" was left out.

Fundamental Rights were guaranteed by both Constitutions although some of the related provisions of the latter Constitution made them non-justiciable. Then there is the question of nomenclature. The 1956 Constitution provided that the State constituted will be known as the Islamic Republic of Pakistan while the Ayub Constitution provided that it would be the Republic of Pakistan. In a separate Statement Ayub Khan had said that if the people wished to call it Islamic they might amend the Constitution. This was subsequently achieved by an amendment.

Supremacy of the Legislature over the Judiciary was asserted with the provision that the Supreme Court has no power of Judicial Review both in case of ordinary laws and the provisions relating to Islam. The former is outside the scope of this discussion, but in cases where the latter is involved an Advisory Council of Islamic Ideology was created. Its very name, however suggested that it had no power as the Supreme Court had in the earlier Constitution to declare a law un-Islamic, but to advise the Legislature only when its advice was sought. Even there the advice may or may not have been acted upon.

The Constitution provided:

"There shall be an Advisory Council of Islamic Ideology. The Council shall consist of not less than five and not more that twelve members as the President may determine. Members shall be appointed by the President on such terms and conditions as the President may determine. The President shall, in selecting a person for appointment to the Council have regard to the persons' understanding and appreciation of Islam and the legal and administrative problems of Pakistan... "The function of the Council shall be—(a) to make recommendations to the Central Government as the means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam; and (b) to advise the National Assembly, and Provincial Assemblies, the President or a Governor on any question referred to the Council under article 6, that is to say, a question as to whether a proposed law disregards or violates, or is otherwise not in accordance with the Principles of Law Making.

(2) When under Article 6, a question is referred by an Assembly, the President or a Governor to the Council for advice, the Council shall, within seven days thereafter, inform the Assembly, the President or Governor, as the case requires of the period within which the Council expects to be able to furnish the advice. (3) Where the Assembly...... considered that in the public interest the making of the proposed law in relation to which the question arose shall not be postponed until the advice is furnished, the law may be made before the advice furnished."[1]

The Consitution was thus very clear that the position of the Council is merely advisory and the legislatures are not by any means obliged to take cognizance of its findings. On the other hand the 1956 Constitution had provided that a law, if it was found in conflict with the provisions of the *Qur'an* and the *Sunna*, could be declared null and void by the Supreme Court.

The 1962 Constitution had created a strong Central power which was embodied in the President. The Presidency was even more powerful than the President of the U.S.A. This was done in the name of stability to facilitate economic progress. In spite of the pressures involved certain bodies of *'Ulama*, among those the *Jama'at-i-Islami* more notably, had not stopped their crusade for an Islamic Constitution. Although the great majority of the *'Ulama* were quietened there was evidence that once the desired economic progress is achieved the religious groups will become more vocal. The fight for an Islamic Constitution had hardly ended. The 1962 Constitution was successful only in silencing it to a certain degree. Although during this period, due to the dominance of other factors, the strife for an Islamic Constitution went in the background.

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[1] *Constitution of Pakistan 1962* articles 202-206.

Up to now Nationalism in Pakistan has been a synthesis of two factors, cultural and economic. On the one hand the goal has been the attainment of a homeland for the Indian Muslims. This has been achieved. The idea that they should carve their lives in accordance with the *Qur'an* and the *Sunna*, however, lies in abeyance. This has somehow meant that the theory that the problems of the Muslims will be over once they come nearer to Islam has been abandoned and a more realistic theory of solving the more immediate problems of economics and development has become predominant. The general theory seems to be that a country such as Pakistan striving to develop its natural resources and industrialise to maintain its identity to eliminate poverty and maintain its independence cannot afford to be distracted in its aims by disputes between the forces of materialism and forces of nostalgia.

Greater emphasis on religious forces as means of integration and less emphasis on the economic equilibrium has now resulted in East Pakistan ending its political ties from the Western region. The Constitution of 1962 has been abrogated and a representative Assembly has framed a new more democratic Constitution. Apparently the power structure created for stability has been rejected and a more democratic Islamic order is envisaged through the Constitution of the Islamic Republic of Pakistan 1973.

CHAPTER IV

MAUDUDI'S POLITICAL INVOLVEMENT

(i) Involvement in Islamic Constitution Making

Pakistan came into existence as the result of a struggle not led by the *'Ulama* but mainly by westernized politicians. The establishment of Pakistan, however, created the problem of the extent of the role of Islam in the ideological and constitutional sense. In the initial months, this had been overshadowed by one of the most important needs of a newly established country, namely stability. The situation was aggravated more by the mass movement of refugees from the Indian side of the border, and the rioting and bloodshed which preceeded it. Most political leaders wanted to see a new flexibility in political and social thinking. If this had been pursued to its logical end, there would have been a danger of losing the much desired and needed stability which would have invited internal dissension and conflict. Initially, therefore, the most important task of politicians was to seek harmony in the face of the differences between the religious leaders and the constitution makers until the state was established on a less precarious foundation.

Apart from a few *'Ulama*, the background of the men who had organised the campaign in favour of Pakistan was not theology and Islamic Law, but politics and the common law; not *Deoband* but Cambridge, the Inns of Court and Aligarh. A great majority of the *'Ulama* did not support the campaign for Pakistan. Muhammad 'Ali Jinnah, Liaquat Ali Khan and their compatriots led a campaign to create a separate state for the Muslims of India. They had not only to fight the Hindu ideology of common nationhood, which explicitly propagated the principle of majority rule—which they thought would relegate the Muslims to a permanent status of minority—but also the set of influential *'Ulama*. These were divided between those who believed in Nehru's Nationalism *(Jami'at-ul-'Ulama-i-Hind)*, and those who, like Maududi and his followers, held to the concept of Islamic *Umma* and be-done in the name of stability to facilitate economic progress. In spite of the pressures involved certain bodies of *'Ulama*, among those the *Jama'at-i-Islami* more notably, had not stopped their crusade for an Islamic Constitution. Although the great majority of the *'Ulama* were quietened there was evidence that once the desired economic progress is achieved the religious groups will become more vocal. The fight for an Islamic Constitution had hardly ended. The 1962 Constitution was successful only in silencing it to a certain degree. Although during this period, due to the dominance of other factors, the strife for an Islamic Constitution went in the background.

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Talking about the plausibility of the creation of Pakistan, *Maududi* had, for instance, asked as late as the early months of 1947: "Why should we foolishly waste our time in expediting the so-called Muslim National State and fritter away our energies in setting it up, when we know that it will not only be useless for our purpose but will rather prove an obstacle in our path."[1]

It was mainly due to this opposition of the majority of influential *'Ulama* towards the creation of Pakistan that its birth frustrated them and they could not, in the early months, make an impression either among the masses or among the policy making circles. Whenever they voiced their opinion about the future constitution of Pakistan, they were at once called 'enemies of Pakistan[2] and it was given out that because their political motives were in harmony with the enemies of Pakistan, therefore, they did not have a right to express their opinions about the future of a country's constitution to which they were not loyal. However, in spite of the odds against them, the *'Ulama* must have gathered ample support in favour of *Shari'a* as the basis of the future constitution for Mr. Jinnah to say in January, 1948: "I cannot understand why this feeling of nervousness that the future constitution of Pakistan is going to be in conflict with *Shariat* Law. There is one section of people who keep on impressing upon everybody that the future constitution of Pakistan should be based on the *Shariat*. The other section deliberately wants to create mischief and agitate that the *Shariat* law must be scrapped."[3] This statement explains how Mr. Jinnah, who in the beginning had probably an entirely secular view of the future of Pakistan, was now submitting reluctantly to the *'Ulama*. He had said in the first meeting of the Constituent Assembly: "Everyone is first, second and last a citizen of this state, with equal

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1 Abul A'la Maududi, *The Process of Islamic Revolution*, Second Edition (Maktaba-i-Jama'at-i-Islami, Lahore. n.d.) p. 37.

2 *The Daily Ihsan* (Lahore) brought the term "enemies of Pakistan" to the fore and the rest of the press followed suit.

3 *The Pakistan Times*, Lahore, February 13, 1948.

rights, privileges and obligations......" and that in the new democracy (Pakistan) "the Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense because that is the personal faith of the individuals, but the political sense as citizens of Pakistan."[1] This amply shows the shift in his views.

An attempt to legitimise the stand of the *'Ulama* first came when on 6th February, 1948, Maulana Maududi broke his silence by asserting that Pakistan "......has been achieved exclusively with the object of becoming the homeland of Islam. For the last ten years *we have been ceaselessly fighting for the recognition of the fact that we are a separate nation by virtue of our adherence to Islam.* We have been proclaiming from housetops that we possess a world view, an outlook on life and a code of living fundamentally different from those of non-Muslims. *We have all along been demanding a separate homeland* for the purpose of translating into practice the ideals evisaged by Islam and, at last, after a long and arduous struggle, in which we sustained a heavy loss of life and property and suffered deep humiliation in respect of the honour and chastity of a large number of our womenfolk, we have succeeded in attaining our cherished goal—this country of Pakistan. If now, after all these precious sacrifices, we fail to achieve the real and ultimate objective of making Islam a practical, social, political and constitutional reality—a life force to fashion all facets of life—our entire struggle and all our sacrifices become futile and meaningless."[2]

The above excerpt from the first of two speeches delivered at the Law College, Lahore, in which the Maulana tried to state the basic concepts of the Islamic State, and gave arguments in favour of Pakistan having an Islamic Constitution, marks the beginning of two new lines of policy for Maududi. Firstly, from now on, he began to identify himself with those who strove for Pakistan, and secondly, he accepted the reality of its establishment and pleaded for an Islamic Constitution. Amongst other motives, by saying that "......we have all along been demanding a separate homeland", he might have had in

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1 Quoted from Farid S. Jafri, "Constitutional Trends in Pakistan", *Pakistan Review*, (June 1953) p. 19.

2 Maududi, *The Islamic Law and Constitution*, Dr. Khurshid Ahmad (Islamic Publications, Lahore, Second Edition, October, 1960) p. 44.

his mind the fact that unless such a premise was taken, it would be impossible to gather support for the Islamic State that he envisaged. It was thus that he abandoned his own theory of 'Islamic Revolution' in favour of the one held by the Muslim League that once established, Pakistan could be made to accept the Islamic concepts. For the Maulana, the problem thus posed lay in convincing the government and those with westernised secular opinions, of the validity and applicability of the Shari'a as he saw it. This meant that he was now accepting the viewpoint that Pakistan came into being for the sole purpose of bringing the reign of God unto the Muslims residing in the territory now called Pakistan. He now directed his whole attention upon, firstly, gathering more support among the educated classes of the Muslims through public speeches, pamphlets, books, medical aid to the refugees and in remote villages, organizing student bodies, etc., and secondly, through putting pressure upon the government in favour of an Islamic Constitution. An agreement about the basic principles of Islamic State among the *'Ulama* of various views was reached to show the government that the *'Ulama* were now agreed upon a plan.[1]

(ii) Comparison with some recent views on the Islamic State

Maududi's thought appears more clearly when seen in comparison with some of his contemporaries.

As we have seen, Islam comprehends government and society in a single whole. With the rise of modern nationalism, however, the theorist found himself faced with a new situation in Pakistan. This new situation arose owing to the fact that Pakistan was now a nation not unlike Great Britain or France. There was no *Khalifa* in existence from whom an investiture could be obtained and a justification for existence provided. The existence of Nationalism along with motivation from Islam created this situation. Although Turkey was the first National State in the Islamic world, the conditions there were different. Turkey had found the institution of *Khalifa* to be no longer valid and had discarded it by saying that *Khalifa* could be embodied in the Grand National Assembly. On the other hand, the situation was new to the Muslims in Pakistan as is

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[1] See Appendix II.

clear from the long discussions in the Constituent Assembly about basic concepts such as Republic, State, Sovereignty of God, Vicegerency of God, *Khilafa, Amir* and *Shari'a* etc. This situation had been created at the birth of Pakistan as a nation distinct from other Muslim Nations. But the very use of such terms as "Islamic State" shows that a compromise has been made. Before the creation of Pakistan, when the situation had been different, the compromise had been of a different nature. Amir 'Ali[1] for instance, had emphasised upon Islam not as a socio-political religion but the moral system which it would create. He had talked not of an Islamic State but an Islamic system. In *The Spirit of Islam* he had outlined the following principal bases of Islam:

> "(1) A belief in unity, immortality, mercy and supreme love of the Creator;
>
> (2) Charity and Brotherhood among mankind;
>
> (3) Subjugation of passion;
>
> (4) The outpouring of a grateful heart to the giver of all good; and
>
> (5) Accountability for human action in another existence."[2] [3]

It is interesting to note that this Muslim writer of the late nineteenth century was not at all concerned with the practical problems of politics and therefore when he explained the basic concepts of Islam, he was not inclined to touch even the periphery of practical problems, such as those connected with the working of a state based on Islam. He was acting as an apologist in a country dominated by a non-Muslim power, while Maududi's main concern is with the problem of an independent Muslim nation state.

The term 'Islamic State' did not come to be generally used until after the creation of Pakistan. The ground work had been prepared by Iqbal as early as 1930 by his Allahabad address to the Muslim League Conference, when he had asserted that a separate state of the Muslims of India be created wherein they could fashion their lives in accord with their ideals. Ameer Ali had a moral tone, Iqbal showed the way but it is the post-independence writer who faced the problem of compromising classical theory of the *Khilafa* with Pakistan as a political reality and a state distinct from other Muslim States based on Nationalism.

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[1] Ameer Ali was one of a group of Muslim writers now termed as 'apologists'. A lawyer and a judge by profession, he wrote *The Spirit of Islam, a History of Saracens*, etc., in an endeavour to bring about a better understanding of Islam in the West.

[2] This interpretation seems strange because of the socio-political nature of Islam. It illustrates that in the nineteenth century, when the British rule in India seemed to be gaining strength, such an interpretation was possible.

[3] Ameer Ali, *The Spirit of Islam* (Christophers. London, 1955) p. 138.

Apart from Maududi, two other men have been concerned with these problems. These are Khalifa ‘Abdul Hakim and Muhammad Asad. It is to these that we must now turn.

(a) Khalifa ’Abdul Hakim

Khalīfa Abdul Hakim's[1] enumeration of the general principles of an Islamic State is particularly interesting as it appears to serve as the basis of the later developments which are incorporated in the writings of Muhammad Asad.[2]

Khalifa Abdul Hakim's points of importance in regard to an Islamic Constitution are as follows.[3]

(1) Sovereignty belongs to God and the principle of social justice is derived from His attributes.

(2) The fundamentals of the Constitution of the State are ordained by God; the fundamental principles of legislation are also sanctioned by Him.

(3) Muslims are free to legislate as the circumstances demand; but no legislation shall violate the basic constitution based on *Qur'an* and the *Sunna*.

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[1] Dr. Khalifa Abdul Hakim (formerly Professor of Philosophy and Dean of the Osmania University, Hyderabad Deccan) *Islamic Ideology---The Fundamental Beliefs and Principles of Islam and their Application to Practical Life*. (Publishers United. 1951. Pakistan Edition). The original edition was printed considerably earlier, probably just before independence.

[2] Leopoid Weiss.

[3] This is a summary of the points discussed in his book *Islamic Ideology*, op. cit., in the Chapter entitled "Basic Concepts of Islamic State". I have had to rearrange points according to their importance from our point of view. Sometimes I have had to rephrase to make the ideas clearer from the constitutional point of view. Khalifa Abdul Hakim, op. cit., pp. 190-242.

(4) Only those people should be chosen to frame laws and regulations who have fully grasped the spirit of Islam.

(5) The learned men (the *'Ulama)* in the state should continue to reinterpret and to revise the laws; they should not be changed merely by the vote of the ignorant masses creating brute majorities.

(6) The well-being of all citizens is the chief purpose of the Islamic State; it shall not be merely a police state whose functions end with the securing of law and order; the Islamic State is a welfare state.

(7) The economics of society shall be so regulated that Capitalism and living on unearned income is discouraged.

(8) The fundamentals of the Constitution shall guarantee equal civil liberties to all subjects. All non-Muslim religious communities shall have the right to get their cases decided according to their own Personal Law, if they do not violate elementary human rights.

(9) Under the Law, men and women shall enjoy the same fundamental rights. Women will be allowed to hold property in their own names.

(10) The right of armed revolt by a group of citizens against even a tyrannical government is not conceded by Islam.

(11) Muslims have the right to enjoy religious freedom. If (in a non-Muslim State) they are persecuted, they shall adhere to their faith and suffer patiently.

(12) Upon reaching the limit of their endurance, they should migrate from the abode of tyranny.[1]

(13) They should try to enter into treaties with the non-Muslim countries creating conditions of peace for themselves and others.

(14) They should not violate these treaties, one-sided violation of treaties is sinful.

(15) When they have gained enough power to protect them-

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[1] The inclusion of this clause regarding refugees (Muhajirin), which is not really of a constitutional nature for an Islamic State, points out that this statement was perhaps written either before partition, to discuss the position of the Muslims in a United India, or just after partition, to justify the mass movement of the Muslims from India to Pakistan.

selves by force, they are allowed to use force against aggressors.

(16) Non-Muslim citizens of the Islamic State are to be granted complete liberty of religious belief in lieu of a small and reasonable tax of protection (*Jizya* or Poll tax).[1]

(b) **Muhammad Asad:**

The other important interpretation came from Muhammad Asad, who was then the Director of Islamic Reconstruction in the Punjab Service. Before Asad left this position, he managed to bring out an issue of *Arafat,* an English language Journal, in which his article entitled "Islamic Constitution Making" appeared. Asad's position here was very similar to the one later taken by Abul A'la Maududi, although the dominant note in it is his endeavour to make it more acceptable to the Western mind.

Muhammad Asad elaborates fourteen points which he thinks are the cardinal features of the Islamic State in its Pakistani context:

(1) The State holds power in trust of God so that the people may live in accordance with the laws of Islam.

(2) The laws of *Shari'a* bearing on matters of public concern form the inviolable basic code of Public Law.

(3) No temporal legislation, mandatory or permissive, shall be valid if it is found to contravene any stipulation of the *Nasus* unchangeable regulations contained in *Qur'an* and *Hadith.*

(4) The Head of the State *(Amir)* shall be Muslim, elected to his office by the Community, and, on being elected, he shall declare that he will govern in obedience to the Law of Islam.

(5) The legislative powers in the State belong to the *Majlis-i-Shura,* the Members of which shall be freely elected by the people. The *Majlis* is entitled to legislate in respect of all matters not covered by the Shari'a and is presided over by the *Amir* or a delegate to be chosen by him from among the members of the *Majlis.*

(6) Self-canvassing by any person desirous of being appointed to an administrative post or of being elected to a representative assembly, shall automatically disqualify that person from being elected or appointed.

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[1] Khalifa Abdul Hakim. *Islamic Ideology--The Fundamental Beliefs and Principles of Islam and their Application to Practical Life.* op. cit., pp. 190-242.

(7) The Head of the State shall be the Head of the Executive and shall be responsible to the *Majlis-i-Shura* for the activities of the Government. He shall appoint and dismiss his Ministers at his own discretion; they shall act as his Secretaries of State and shall be responsible to him alone.

(8) Guardianship of the Constitution is vested in the Supreme Tribunal, the Members of which shall be elected by the *Majlis-i-Shura* on the advice of the *Amir.* This Tribunal shall have the right:

(a) to arbitrate on the basis of the *Nass* ordinances of *Qur'an* and *Sunna* in all cases of disagreement between the Amir and the *Majlis-i-Shura* referred to the Tribunal by either of the two parties.

(b) to veto on the Tribunal's own accord, any legislative act passed by the *Majlis-i-Shura* or an administrative act on the part of the *Amir* which in the Tribunal's considered opinion offends against a *Nass* ordinance of *Qur'an* or *Sunna;* and

(c) to order the holding of a referendum on the question of the *Amir's* deposition from office in case the *Majlis-i-Shura* prefers, by a two-third majority an impeachment against him to the effect that he governs in flagrant contravention of the *Shari'a.*

(9) Every citizen has the right to express his opinion in speech and writings, on any matter of public concern, provided that such an expression of opinion:

(a) does not aim at undermining the people's belief in Islam;

(b) does not amount to incitement against the Law of Islam or to sedition against the established government; and

(c) does not offend against common decency.

(10) Whereas non-Muslim citizens shall be free to preach their religious beliefs within their own community and within communities belonging to other non-Muslim religious, all missionary activities directed at converting Muslims to another

religion shall be deemed a cognizable offence and shall be punishable by Law.

(11) The State guarantees to all its citizens full freedom and protection in the expression of their religious beliefs, and in the exercise of their religious practices, as well as the pursuance of all their legitimate cultural interests. No non-Muslim citizen shall be compelled, directly or indirectly, to embrace Islam against his will and conscience; and forcible conversion of the non-Muslims to Islam shall be deemed to be a cognizable offence and shall be punishable by law.

(12) Throughout the domain of the State, education shall be free and compulsory for every citizen, male and female, from the age of......[1] to the age of......[2] years and the Government shall make suitable provision for the establishment and running of schools. Islamic religious instruction shall be an integral compulsory part of the curriculum insofar as Muslims are concerned, while in all schools controlled by the Government, arrangements shall be made as well for the instruction of non-Muslims in the tenets of their religions, provided that the communities concerned so desire.

(13) The lives, persons and possessions of the citizens are inviolable and none shall be deprived of his life, freedom or property except under the Law.

(14) It falls within the responsibility of the State to ensure to every one of its citizens:

(a) productive and remunerative work while of working age and in good health,

(b) free and efficient Health Service in case of illness, and

(c) a provision, by the State, of adequate nourishment, clothing and shelter in case of disability arising from illness, unemployment due to circumstances beyond individual control, old age, or under age. No citizen shall suffer undeserved want while others have more than they need; and every citizen shall be protected from such undeserved want by means of a free and compulsory State Insurance carrying an equitable

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[1], [2] He leaves the age unfixed and assumes that it will be fixed by legislation.

subsistence, the minimum to be determined by law in accordance with conditions prevailing."[1]

(c) Some Reflections

The basic concepts of Maududi in regard to Islamic State, as found in his writings are as follows:

(1) Sovereignty belongs to God and the State shall administer the country as His agent.[2]

(2) The Islamic *Shari'a* shall form the law of the land.[3]

(3) There shall be no legislation which would be in opposition to the dictates of the *Shari'a*.[4]

(4) All existing laws which are not in accordance with the *Shari'a* shall be abrogated.[5]

(5) It shall be incumbent upon the State to proscribe by law all such vices which are considered such by Islam and to promote, uphold and stabilize all such virtues as are upheld by Islam.[6]

(6) None of the basic civic rights of the people—security of life, freedom of speech and freedom of movement and association—shall be interfered with unless a crime has been proved in an open court of law after affording due opportunity for defence.[7]

(7) The people shall have the right to resort to the court of Law against transgression on the part of the executive machinery.[8]

(8) The Judiciary shall be separated from the Executive.[9]

(9) It shall be the responsibility of the State to provide for the citizens the basic necessities of life, namely: food, shelter, clothing, medical aid and education.[10]

(10) The *Qadianis* (the adherents of the Ahmadiyya Movement) shall be included in the list of non-Muslim minorities

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[1] Asad Muhammad (Leopold Weiss) "Islamic Constitution Making", *Arafat*, Lahore, March 1948. pp. 35-105.

[2] Maududi, *Islamic Law and Constitution*, op. cit., p. 107.

[3] ibid.

[4] ibid.

[5] ibid.

[6] ibid.

[7] Maududi, *Insan key Bunyadi Huquq* (Islamic Publications Lahore. 1963), p. 29.

[8] ibid

[9] ibid

[10] ibid

and their seats in the legislature shall be reserved according to their population through separate electorates.[1]

Maududi's contemporaries differ in their approach, agreements and disagreements with the points in this position of his. With regard to the question of where sovereignty resides, all think as he does that sovereignty resides in Allah alone. The differences appear in their attitudes towards *ijtihad.* The reason is their different conceptions of the ways in which Allah delegates His authority to man and to his institutions. Maududi and Muhammad Asad agree in regarding the community under Allah as having the right to *ijtihad,* a right which they may confer upon a body such as legislature which they elect. Asad incidently would allow fuller delegation than Maududi would approve. Khalifa 'Abdul Hakim by contrast would confine *ijtihad* to the *'Ulama,* those learned in the matters of Islamic Law.

In the further working out of this principle on which they are both agreed initially, Maududi and Muhammad Asad part company. The latter asserting that the right of reviewing *ijtihad* should be vested in a Supreme Court.

In October 1948, *Charagh-i-Rah,* the monthly Journal of the *Jama'at-i-Islami,* published the constitutional proposals of Muhammad Asad, with a similarly arranged series of Maududi's. Asad was given faint praise by the writer, but his suggestion that the guardianship of the Constitution should be vested in the Supreme Court was criticised. It was said that such a practice was not in vogue in the period of the 'rightly guided' caliphs. Maududi would refuse to give the power of review to a Supreme Court because such a practice would place *qiyas* or *istidlal* above *ijma'* of the community which has, according to tradition, been supreme.

Another matter on which they disagreed is the position of Amir in an Islamic State, and his relations with the legislature or Councils. In this the point at issue is still where *ijtihad* resides. Asad's ideas have been fully outlined above. We can see in them strong influences of the western democratic system. Maududi's position is as follows:

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[1] Maududi. *Qadiani Mas'ala* (Islamic Publications, Lahore Second Edition, 1963) p. 19, etc.

The Amir shall have full freedom in interpreting the commandments of the *Shari'a,* the use of analogous reasoning, the use of *ijtihad* and recommendatory legislation within the limits of the *Shari'a.*

Issues before the Council will generally be settled by majority vote......

If the Amir and the Council or the majority thereof disagree: (1) the Amir will *generally* accept the opinion of the Council or a majority thereof in questions connected with the administration of the State or the improvement of the government, (2) the Council will generally accept the opinion of the Amir in regard to specific *Shari'a* issues in which *ijtihad* or the interpretation of explicit laws is involved.

When the Council expresses a want of confidence in the Amir, the question of which should resign, will be settled by a plebiscite (plebiscite clause).

It is the duty of the Council to make laws by analogous judgement and provide *ijtihad* on any of the commands of God, which are either obscure or ambiguous. On questions which the *Shari'a* leaves open, mankind has the right to legislate, but the Council may not legislate on any point on which there is a provision of the *Shari'a* nor contrary to the spirit of the *Shari'a.*[1]

The rights of the Amir in respect of modifying the *Shari'a* are described above. This was first mentioned by Maududi in his first Law College talk. He gave the power of devising laws to a Council of *'Ulama.* But both the Amir and the Council are to make use of *ijtihad,* and the line of demarcation between interpretation of *nass* and framing new laws would, in practice, become very difficult to draw. However, the whole idea of the elimination of the power of interpretation from the sphere of the Council is based upon a previous statement by Maududi that the Amir should not be bound by the advice of the Council. The institution of Amir as far as Maududi is concerned is to be the direct reflection of the institution of the *Khilafa* in its early Meccan sense. This concept of Maududi is also confirmed by what is implicit in the "plebiscite clause", wherein a plebiscite is to decide who is to resign in case of disagreement between the Council and the Amir. If we imagine a case in which the cause of disagreement is interpretation of the *Shari'a* then the *Umma* appears to be the final authority in interpreting the *Shari'a* and the whole thing relegates to the modern democratic principle.

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[1] Maududi, (Law College Lecture) *Islamic Law and Constitution,* op. cit., p. 103.

Dealing with those in high executive positions, Maududi is opposed to Muhammad Asad. The latter had come very near to the modern democratic principle by asserting that in an Islamic State only the office of the Amir could be reserved for Muslims; Maududi on the other hand insists that no offices of high responsibility could be given to non-Muslims.

(iii) Activities Leading to Maududi's Arrest

An examination of the history of Pakistan's formative years shows that three issues dominated the political field. These were the Islamic character of the State, the Kashmir problem, and Problems of Federalism and 'provincialism'. The last arose from conflicting political interests between the provinces: Bengal, Punjab, Sindh, North West Frontier and Baluchistan, and need not be discussed here. But the remaining two were in one way or another closely connected with religion and the concept of an Islamic State and we must concern ourselves with them.

(a) Advocacy of Islamic Constitution

In 1947, Maududi delivered five speeches from Radio Pakistan, Lahore, which were meant to convery the Islamic doctrine of society, and were later published under the title, *Islam ka Nizam-i-Hayat.*[1] In these talks, he brought out the general features of the Islamic Civilization, as opposed to 'Godless Civilization'. The very titles of these lectures explain admirably how all comprehending the religion of Islam is to Maududi: Islam as a Cultural System; Islam as an Economic System; Islam as a Spiritual System.

In January 1948, Maududi gave two of his intended six lectures on the concept of the Islamic State at the Lahore Law College. In these he demanded an immediate declaration from the Government incorporating the following four principles:

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[1] Maududi, *Islam Ka Nizam-i-Hayat.* (Islamic Publications, Lahore 1956).

(1) That Sovereignty in Pakistan belongs to God Almighty alone, and that the Government of Pakistan shall administer the country as His agent;

(2) That the basic law of the land is the Islamic *Shari'a,* which has come to us through our Prophet Muhammad (peace be upon him);

(3) That all those existing laws which are in conflict with *Shari'a* shall in due course be repealed or brought into conformity with the basic law, and no law which is in any way repugnant to the *Shari'a* shall be enacted in the future; and

(4) That the State in exercising its power shall not be competent to transgress the limits laid down by Islam.[1]

But along with this, there was very harsh criticism of the existing policies of the government and its administrative organization. He criticised the government on its failure to bring corrective measures in respect of corruption and bribery in government departments.

These activities made him a source of such irritation to the government that secret police were presumably asked to keep a close watch over him. Daily *Anjam* (Urdu) published the following editorial:

"We have found out from reliable sources that the activities of Maulana Sayyid Abul A'la Maududi have become of great concern to the Government. Special instructions have now been issued from the Home Ministry to the Secret Police Service to keep a close surveillance over his movements and activities. Top Secret instructions have been sent to various departments of the government in connection with the supporters of Maududi who may be employed in government service. It has been said that a few very high officials of a certain department had issued directives, without the knowledge of the government, that their departments in future would be run on Islamic lines. These officers, it has been revealed were the supporters of Maulana Maududi......Under these circumstances, the government has decided to take steps to curb the activities of the *Jama'at-i-Islami.* Last month, subsequent to a visit of the Maulana to Karachi, the Jama'at's activities widened to become more aggressive and brought biting criticism of the Government.[1]

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[1] Maududi. "Speech delivered on 19th February, 1948, Law College Lahore", *Islamic Law and Constitution* op. cit., p. 107.

During this period some other pronouncements of the Maulana such as that dealing with the war in Kashmir, were published by newspapers which in the eyes of the governing Muslim League made him public enemy No. 1, with the result that he, along with two of his most ardent supporters and disciples, Maulana Amin Ahsan Islahi[2] and Tufail Mohammad[3] were arrested under Section 3 of the Punjab Public Security Act, 1947[4] and remained imprisoned for the next 20 months.[5]

The problems such as Kashmir, the exodus of the refugees, the existence of minorities, constitutional difficulties arising from 'provincialism', and above all the simple process of settling down, had made the government extremely stability and security conscious. These circumstances had brought about a situation where disagreement with the policies of the government, however legitimate it may have been, was equated with treason. In the case of Maududi, not only his policies over the constitution but also his view on some of the most important public issues had become the cause of his arrest and imprisonment.

(b) Allegiance and Kashmir

The 1947 Independence Act had provided that until a new constitution was framed by the Constituent Assembly of Pakistan, it would remain a British Dominion, and would be run predominantly under the 1935 Act. This meant that an oath of allegiance to the 1935 Act was demanded from high officials including the Governor General, Governors of the Provinces, etc. The question was brought up first by the Press as to whether in a prospective Islamic State, to take an oath of allegiance to an unGodly constitution was legitimate for a Muslim. Maududi had discussed the matter in a private letter. He had held that a Muslim can only take an oath of allegiance to God and that taking an oath of allegiance to any other authority except that of God was not only un-Islamic but positively sinful. This letter came into the hands of the newspapers sympathetic to the government. For any new government, a statement of that kind, however true it might be from the conceptual point of view, was challenging the very foundation of the administration, and was not to be taken lightly.

When the Pakistan armies went to the aid of the tribesmen in Kashmir in May, 1948, the Indian advance was checked, but success was not forthcoming. The United Nations Commission for India and Pakistan passed a resolution concerning a cease-fire on 13th August, but no actual cease-fire came into force until India's acceptance of a plebiscite in Kashmir after the end of the hostilities. Ultimately, the cease-fire came about on 1st January, 1949, and U.N.C.I.P. added provisions for a plebiscite to its August Resolution on 5th January and both sides accepted these resolutions as the basis of settling the dispute. There was, however, a general feeling both in Pakistan and Kashmir that the decision of Liaquat 'Ali Khan, the then Prime Minister of Pakistan, to accept the cease-fire came just when the *Jihad* was going in favour of the Muslim peoples. It was probably this aspect of the question which resulted in someone putting the question of Kashmir to Maududi who was campaigning for an Islamic State and was the author of one of the most important works on the concept of *Jihad* (*Jihad fil-Islam*). It was alleged that Maududi had declared in a public speech at Peshawar that war in Kashmir was not *Jihad*. The news was first published in the Daily *Shahbaz*, Peshawar (Urdu), and it was asserted that this attitude in a public declaration could have dire effects on the position of the government regarding the legitimacy of the Kashmir war. Maududi and his party have all along denied such a declaration. However, I have discovered a passage in the *Tarjuman-ul-Qur'an* (ed. Maududi) where Maududi declared that for

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[1] Daily Anjam, Karachi, dated 16th May, 1948.

[2] Amin Ahsan Islahi was at the time Deputy Amir of the Jama'at and was supposed to have become Amir in case of Maulana's arrest or illness.

[3] Tufail Muhammad was the Secretary of the Pakistan Jama'at-i-Islami.

[4] Section 3 of the Punjab Public Safety Act 1947 provided that any persons whose activities are considered dangerous to the security of the State may be kept imprisoned for a period of six months without a trial by a Provincial Governor's order.

[5] After serving the initial six months, the Governor's order was three times renewed. In the second month of the final renewal, however, the High Court of the Punjab pronounced in another case that the Government was not entitled to detain any individual for a total period of more than 18 months under the said Safety Act. Consequently, Maududi and his compatriots were released.

Kashmiris it may be *Jihad* but under the Islamic provisions of International Law, until such time as the Indian and Pakistani Nations were at peace and treaties of any kind existed between them, there could be no *Jihad* in Kashmir for Pakistanis.[1] Maududi was speaking of *Jihad* in very different terms from those of his opponents. However, the press and radio both in India and Indian-held Kashmir picked up and broadcast Maududi's *fatwa* (a religious proclamation). The Pakistan Information Department answered by denouncing him as a Congress-motivated *Mulla,* who had opposed Pakistan since before its inception. The position was further aggravated when Tufail Ahmad, the Secretary of the Jama'at said similarly in a letter which came to light, that he believed that until and unless Pakistan explicitly declares its intention to adopt an Islamic Constitution, for an individual to enlist in its armies and to fight for non-Islamic ideals and die for that cause, is not in fact dying in the path of Allah.

(iv) Objectives Resolution.

The Objectives Resolution was passed by the Pakistan Constituent Assembly on 12th March, 1949. Generally speaking the *'Ulama* hailed it as a victory for those who wished to bring about an Islamic Constitution for the country. As stated earlier the Objectives Resolution was not a Constitution but defined the general Islamic principles on which the Constitution would ultimately be based.

The Resolution runs thus:

"Whereas the sovereignty over the entire universe belongs to God Almighty alone, and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him is a sacred trust;

This Constituent Assembly representing the people of Pakistan resolves to frame a constitution for the sovereign Inrependent State of Pakistan;

Wherein the State shall exercise its powers and authority through the chosen representatives of the people.

Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed;

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[1] Maududi, *Tarjuman-ul-Qur'an,* June 1948, pp. 120-124.

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy *Qur'an* and the *Sunnah;*

Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures;

Whereby the territories now included in or in accession with Pakistan and such territories as many hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous within such boundaries and limitations on their powers as may be prescribed;

Wherein shall be guaranteed fundamental rights including equality of status before law, social, economic, political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

Wherein the independence of judiciary shall be fully assured;

Wherein the integrity or the territories of the Federation, its rights including its sovereign rights on land, sea and air shall be safeguarded.

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the world and make their full contribution towards international peace and progress and the happiness of humanity."[1]

To understand the nature of the compromise in the Objectives Resolution, it is first important to understand that neither the *'Ulama* nor the men of politics as yet had attempted to define in clear constitutional terms what Pakistan's future constitution was to look like. Maududi had attempted to show the Islamic principles in the Four Demands but even those dealt with an initial announcement that Pakistan should be an Islamic State and the rest of his writing was still a 'random stab in the impenetrable darkness.'

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During the time that the controversy raged in Pakistan over the provisions of the Objectives Resolution, Maududi was in prison and no pronouncement came from him except that his supporters argued that now that the 'Four Demands' had been accepted by the Government in the shape of the Objectives Resolution, he should be released. A response from the government was not forthcoming and in the proceedings of the Annual Conference of the *Jama'at-i-Islami* held in Lahore on 6th, 7th and 8th May, the Objectives Resolution was praised as the achievement of the *Jama'at*,[1] and a further appeal was made to bring in the Islamic Constitution as soon as possible. The *Jama'at's* official leaflet of the proceedings of the annual meeting asserts that the passage of the Objectives Resolution has once and for all decided that Pakistan will be an Islamic State in which the source of all law will be God and that the people will conduct the affairs of the State in accordance with His wishes. Apart from this, ten resolutions were passed, some dealing with wider, others with more immediate, problems of the country. They included such varied problems as Kashmir, Sales tax, economic equality, refugees, the Punjab Public Safety Act, and the treatment of the supporters of the *Jama'at* in the North West Frontier Province.

(v) Later Political Activities

As the interim Report Basic Principles Committee had no effective Islamic provisions it seemed to the 'Ulama to be a constitutional plan based on 1935 Act. There were allegations from the Muslim League, the Party in Power, that the *'Ulama*, even if they are asked to present a plan, could not agree. To combat this, Maududi tried to call a conference of the *'Ulama* with the help of certain members of the Board. Thirty one *Sunni* and *Shi'a* 'Ulama met at Karachi on 21st January 1951 to formulate fundamental principles of an Islamic State (See Appendix III). A plan obviously drafted by Maududi was adopted and released to the Press within five days, with this, a pressure from Maududi upon the Muslim League the party in power, was redoubled for the adoption of these principles in the Constitution of Pakistan.

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[1] *Qarardad-i-Mqaasid Kay Ba'd Hakumat aur Millat ki Na'i dhimadarian ---Ten Resolutions of the Jama'at-i-Islami Annual Conference, 6th, 7th and 8th May, 1949, Lohore*, (Department of Publications Jama'at-i-Islami, Lahore, n.d.) p. 3.

Soon after 1952, 1953, the *'Ulama* became involved in the anti-Ahmadiyya (Qadiyani) movement, which proved to be a set-back in their activities towards the creation of Islamic Constitution in Pakistan.

When the Government did not submit anti-Ahmadiyya demands, an Action Committee was created which was instrumental in bringing about riots in the Punjab. Although Maulana refused to send a representative of his party to the Action Committee, he wrote a pamphlet entitled the *Qadiyani Mas'ala*.[1] After the declaration of Martial Law in Lahore, he along with some other 'Ulama was tried in Lahore by a Martial Law Court and sentenced to death for "inciting the public" into rioting. This sentence was commuted first to fourteen years and then to two years' imprisonment.

This period served as an inter-regnum in his activities towards the creation of an Islamic State in Pakistan. Ayub Khan's regime was by no means conducive to political activities. The 1962 constitution given to the nation by the Field Marshal brought in a centralized political system in which the main emphasis was towards development. Both the formation of policy and the execution of policy was entrusted to the civil servants and the traditional politician had no place in this plan. A sort of politics did exist but it had to be politics without conflict of opinions. This system prevailed in the country until one of Ayub's colleagues came out on to the streets and started to talk about democracy, socialism and Islam. This was Mr. Zulfikar Ali Bhutto for many years Ayub's Foreign Minister. Maulana Maududi at once went into opposition to the Socialism of Bhutto and at one stage led the rightist group in the country. Bhutto's mass movement and the deteriorating law and order situation made the Field Marshal step down and declare Martial Law in the country. Gen. Yahya Khan the Commander in Chief of the Army came into power as the new Martial Law Administrator promising elections on the basis of adult franchise. The 1962 constitution was abrogated. Soon after this the Six Points of Mujeeb-ur-Rahman of the Awami League once again came to the surface of political activities in the country. Mujeeb was asking for a complete provincial autonomy. Maududi's party vehemently criticised the Six Points on the grounds that these would retard the growth towards the creation of an Islamic State in Pakistan. Yahya Khan conducted the elections and the most unexpected happened. In spite of the governmental support of Maududi's party it could only muster a small number of seats in West Pakistan. The People's Party of Mr. Bhutto with its socialistic programme emerged as the largest party in West Pakistan. The East Pakistani results showed a large majority of Mujeeb's party. What happened in East Pakistan is beyond the scope of this work, however, Maududi's party failed because its rightist programme was not acceptable to the general public and moreover, because it had failed to capture the mosque. Other parties of religious feeling which had more influence over the pulpit did much better than the *Jama'at-i-Islami.*

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[1] Maudud. *Qadiyani Mas'ala Aur us kay Dini, and Tamadduni Pahlu* (Islamic Publications Ltd. Lahore, 1963) op. cit., p, 105.

CHAPTER V

PRINCIPLES OF LAW AND CONSTITUTION

In spite of the fact that Maulana Maududi's writings are basically topical and propagandist (for he is a politician who until recently headed a political party striving for power and has dealt with the problems of the Islamic State according to exigencies of time and events), there emerges from his writings a systematic attitude towards constitutional law and jurisprudence. He thinks of Islam as an ideology and of the Islamic State as an ideological state not unlike the Communist State, although much different from it in essence and purpose. Islam, according to Maududi, is an eternal order by which God wills the universe to proceed.[1]

He further feels that Islam is the way of establishing God's Will on earth. To establish God's Will on earth, we must know that Will and understand some of the basic postulates which God wishes us to understand. These are as follows:

(1) That God created the whole universe and man. He has appointed man as his vicegerent on earth and has endowed him with faculties of thinking and understanding and has given him the power to distinguish between right and wrong.

(ii) Before assigning to man His vicegerency on earth, God made it explicitly clear to him that He alone is the "Overlord and Ruler and the Deity." Consequently, He wishes man to submit to Him alone. Man should not at any time think that he is his own master, and should also be conscious of the fact that the earth is not his permanent abode, and that there is a life after his temporary life on earth is terminated. In other words, it is only to serve a period of probation that he has been brought to this world.

(iii) To make the life of man happy in this world, and to fulfil his purpose, and also to prepare him for the higher kind of life hereafter, God made His Will abundantly clear to mankind through His *Rasuls* (messengers of God on whom complete codes of life, *Shari'a,* were revealed) and *Nabis* (the Prophets who received revelations about some aspects of life but who did not come with a complete code of life and carried on the principles enunciated by the *Rasuls).* We should obey these instructions of God, firstly because they are the Will of God, our Creator, and secondly because they are for our own good. Conduct contrary to this will lead man to the path of those who are evil; but if on the other hand he follows the path defined by God, he will have a life of peace, contentment and harmony with other men in this world and "will qualify himself for the heaven of eternal bliss, *al-Janna*".[1]

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[1] Maududi, *Islamic Law and Constitution*. Op. cit. p. 76.

(iv) From time to time, God has sent these messengers to man with his instructions. It was this religion of truth (Islam) which Adam, the first man, passed to posterity. "Out of negligence they (human beings) lost their original religion and out of mischief they adulterated and perverted it".[2] They began to associate other gods with God and began to indulge in polytheism *(shirk)*, and "discarded the God-given principles of social justice and collective morality, the *Shari'a* and deprived human life of peace and tranquillity".[3]

(v) At last, God raised the Prophet Muhammad and assigned to him the task of completing the mission for which earlier prophets were ordained. He presented anew the teachings of Islam to provide humanity with the divine guidance which it had lost through its negligence, etc. Muhammad organized all those who had accepted God's message into an *'Umma,* which was charged with its own reconstruction according to the principles of the divine code of life. This guidance is enshrined in the Holy *Qur'an* which is the only right code of conduct for mankind.[4]

Maududi believes that the necessity of an Islamic State as well as the all-comprehensiveness of the *Qur'an,* becomes clear from these postulates. The Islamic concept envisages that man should "devote his entire life to the cause of Allah"[5]

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[1] Maududi, *Islamic Law and Constitution.* Op. cit. p. 166.

[2] ibid. p. 167.

[3] ibid. p. 167.

[4] Maududi, *Tafhim-ul-Qur'an,* Vol. 1, (Islamic Publications, Lahore, 1951), pp. 16-19.

[5] Maududi, *Islamic Law and Constitution.* Op. cit. p. 168.

whose commandments should be followed in every sphere of human activity. He believes that the *Qur'an* not only lays down principles of morality and ethics but that it also gives guidance in political, social and economic fields. These, he believes, cannot be put into practice until a political order, a state, is created to enforce them. Thus the necessity of the supreme overlordship of God emerges to occupy the dominant part in the political theory of Maududi.

It is this Supreme Overlordship of God which has been expressed by Maulana Maududi's translators as the concept of Sovereignty in Islam. Maududi, for want of an exact term to express this concept, has also fallen upon the word 'Sovereignty' and goes to great pains in many places to define and explain the meaning of 'Sovereignty' as used by Western jurists and political scientists. 'Sovereignty' as a term of political science is used in the sense of absolute overlordship or complete suzerainty. If a person or an institution is to be 'Sovereign', then it would follow that the word of that institution or person is Law. A 'Sovereign' has an undisputed right to impose his will on his subjects and the subjects are under complete obligation to obey him. If we say that sovereignty resides in the people of a nation, then we are assuming that they, as a community of people and as sovereigns, have the right to change the fundamentals of law when they deem it necessary. Islam by its very nature, Maududi holds, is opposed to this concept of a person or a community having full power to change or even frame the fundamental laws, because the fundamental law or the constitutional law is revealed by God to his prophets and man has no right to interfere in it. Thus Grotius' 'Sovereign' power, the "supreme political power of him whose acts are not subject to any other and whose will cannot be overridden", can only be attributed to God. This, of course, would change the whole basis of western political ideology, and that is why it is sometimes difficult to see what Maududi means by saying that the Sovereignty over a state is that of God. One of the essential attributes of Sovereignty as implicit in juristic literature is that it should be able to be located in some human institution, person or persons. The hypothetical God directing a society of Islam where God is the ultimate source of Constitutional Law would be an impossibility. We would not, of course, be able to locate Sovereignty in a human organisation or institution.

As far as the classical concept of Sovereignty is concerned, it would appear that Maulana Maududi is not quite justified in using the term to mean the Overlordship of God. Yet, in one way, it appears that he is justified in criticising the concept of classical Sovereignty by saying that it is situated in God as a Legal Sovereign and not in a human institution. The pluralistic attitude towards sovereignty had already damaged the very base of the concept of indivisible sovereignty. Pluralists like Harold Laski and G.D.H. Cole had put forward the view that apart from the State there are other institutions which hold power and authority over individuals. The State, although it was the supreme institution, could not disregard the authority of those other institutions, such as the church, the trade unions, etc. God, however, is above all institutions and so this would appear to revalidate the concept.

The question now arises that if Sovereignty resides in God, what is man's position on earth? Maududi holds that the logical conclusion of the location of sovereignty in God is that man is his vicegerent on earth, and his mission in life is to carry out and establish the command of the Sovereign. He also takes pains at this stage to draw on the *Qur'an,* quoting; "Thy Lord said unto the Angels: Lo! I am about to place a Viceroy *(Khalifa)* on the earth". *(Qur'an* II; 30). It is from this that the concept of *Khilafa* develops. When the Maulana speaks of *Khilafa* he never means the institution of the head of the community, for which he devises the name *Amir,* but the whole position of man as God's vicegerent.[1] The concept of the whole community as the holders of the *Khilafa* is supported by another verse from the *Qur'an:* "Allah has promised to those *who believe* and do righteous deeds that He will assuredly make them succeed and grant them vicegerency in the land just as he made those before them to succeed (others);" and again; "And then we created you our vicegerent on earth so that we can see what your actions will be" *(Qur'an 7:129).* The position of vicegerency which Maududi's

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[1] Maududi, *Khilafat-o-Malukiyat,* (Islamic Publications Lahore, 2nd Edition, 1966, pp. 33-35.

interpretation accords to the community of believers has two significant conditions: first, that man acknowledges as from God the power which is delegated to him; and second, that the power of ruling over the community is not delegated to an individual or individuals, family, or class, but to the community as a whole. From this it follows that "all believers are repositories of the Caliphate" and the question of the election of the *Amir* or the Head of the State does not restrict the position of the individuals together to be the true vicegerents of God. There is no limit to the authority to be exercised by man so long as he does not reject, abrogate, or supersede the Law of God (or the injunctions of Islam). Consequently, a Muslim assembly cannot reject the *Qur'an.* It only has the power, by virtue of its status as vicegerents, to apply and extend the Quranic Law in circumstances when such extension is sanctioned under the *Shari'a.* Maududi is, however, against the view that a state thus created will be a theocracy. A theocracy, he says, is a state run and overlorded by the clergy, and because Islam is, by its very nature, against such an institution, the Islamic State in which we accept the Sovereignty of God as a source of law is not theocratic. To explain the nature of such a state, he says that a term like 'theo-democratic' would be nearer the truth. By this he means that the Islamic State, instead of being administered by a priestly hierarchy, would be administered by the whole community or *Umma.* When using the term 'theocracy' in the meaning commonly given to it in Western parlance, Maududi is doubtless right in refusing to describe the Islamic State as a theocracy. We may contend, however, that to use the term in its exact derivation (God-rule) would enable us to apply it exactly to the Islamic State.

Islam admits to no sovereignty except that of God, and does not accept any lawgiver other than Him. Maududi affirms that the concept of the unity of Godhead means that God, along with being the sole object of worship, is the sole lawgiver invested with complete legal Sovereignty in the sense that the term is understood in jurisprudence.

The fact that the Islamic State is a state based on the *Shari'a* makes it difficult to define the scope of legislation in a contemporary Islamic State. Muhammad Asad and Zia

Gukalp say that only the *nasus* (clear textual injunctions such as those of the *Qur'an* and the *Hadith)* form the basis of the *Shari'a,* and *fiqh,* developed by the four schools of jurists as the basic foundation of the *Shari'a,* is rejected by them. Asad wrote: "it is the *nasus* of the *Qur'an* and *Sunnah* that collectively constitute the real eternal *Shari'a* of Islam".[1] He holds the viewpoint that laws derived through *ijtihad* were created for the purpose of serving certain situations and, therefore, if the situations and the problems have changed, there is no harm in rejecting them and finding new legal solutions. *Fiqh* in these cases will have to be rejected. This interpretation would leave a large sphere of action for the legislator. Maududi's attitude, on the other hand, is not so liberal. He is not in favour of rejection of *Fiqh* as one of the primary pillars of *Shari'a.* His attitude towards the place of *fiqh* in legislation is slightly more traditional.

Maulana Maududi thinks of the whole system of Islamic Law as one single unity, recognisable only as that unity. He applies the term 'Law' as opposed to Constitutional Law, for only that sector of law which needs coercive power, because he says only that section of law is termed as law in modern legal parlance. He calls the law of Islam, 'Islamic Law' to help us grasp the concept. He says that political authority is essential for protecting the Islamic way of life from deterioration and perversion, for the eradication of vice and the establishment of virtue, and also for the enforcement of those laws which require sanctions for the administration of justice. This guidance covers such an extensive field that we can never feel the need of going beyond the *Shari'a* for meeting our legislative requirements. Its detailed injunctions are "such that they can always fulfil the needs of human society in every age and in every country—provided, of course, that the entire Islamic scheme of life is in operation. They are so comprehensive that we can frame detailed laws for every emergency and for every fresh social and moral problem. Within that sphere, the legislature has been given the power of legislation. All laws thus formulated are to be considered

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[1] Muhammad Asad, "Islamic Constitution Making" *Arafat* (March 1948), p. 47.

as an integral part of Islamic Law. That is why the laws framed by our jurists in the early days of Islam for the sake of 'public good' form part and parcel of Islamic law".[1] Considering this statement, Rosenthal[2] comes to the conclusion that Maulana Maududi is in complete agreement with the orthodox point of view in the sense that he includes *fiqh* as the important part of Islamic Law. This cannot be completely accounted for. The only immutable law of Islam to Maududi is that which is derived from the *nasus* of the *Qur'an* and the *Sunna.* Maududi makes it amply clear that *fiqh,* although it has to be taken into consideration, does not form that unchangeable part of Islamic Law.[3] Again the orthodox point of view has been influenced by one or the other of the schools of *fiqh,* i.e., Hanafi, Shaf'i, Hanbali and Maliki etc., and one of these schools of jurisprudence in its entirety had to be followed. But Maududi feels that all these schools of *fiqh* along with important works of legal interpretation have to be considered to find the 'best', which in our case would be the best suited to our conditions, chosen out of these systems and adapted.[4] The process of adaptation would, of course, be a problem of legislation, and therefore, the consideration of existing *fiqh* would not limit legislation as much as Rosenthal believes. Consideration of *fiqh* in providing a new interpretation, morever, forms (for Maududi the only flexible part of *Shari'a.* In spite of a general strain of conservative fundamentalism, which runs through the whole of Maulana Maududi's attitude, there are nevertheless elements of liberalism in his attitude towards Islamic Law. He is conscious of the fact that Islamic Law has not progressed with changing conditions, implying that each of the schools of *fiqh* have each been outdated, and expresses the opinion that *tawil* (probing into the meaning of the *Qur'an* and the *Sunna), qiyas* (analogy), and *Istehsan* (juristic preference) have to be re-used to bring the Islamic Law up to date. He maintains, unlike, Muhammad Asad, that only the deeply learned and pious among the *Umma* should be allowed to probe into the nature of Islamic Law. Muhammad Asad had held the opinion that this is not necessary. Basing his attitude on the *Hadith* "My people *(Umma)* will never agree on a falsity", Muhammad Asad had held that a body such as the Supreme Court or the elected representatives of the people should be qualified to probe into the Islamic Law to find the elements best suited to our conditions. He held that their decisions would be Islamic in spirit because the community has taken an active hand in appointing them and delegating the necessary powers to them.

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[1] Maududi, *Islamic Law and Constitution*. op. cit. p. 59.

[2] Rosenthal, E. I. J., *Islam in Modern National State* (Cambridge U.P. 1965), p. 139.

[3] Maududi, *Islamic Law and Constitution,* op. cit. pp. 110-115.

[4] Maududi, *Islamic Law and Constitution,* op. cit. pp. 110-115.

As for establishment of the Islamic legal system in his country, Maududi holds that this cannot be done all at once by repealing the established set of laws and substituting Islamic laws. He feels that Islamic laws have to be introduced by a gradual process, and justifies his principle of gradual change by asserting that even the Prophet did not enforce the entire body of Islamic Law at the same time.

The first thing we should do in the direction of the establishment of the Islamic State is to define our goal in unambiguous terms, namely those expressed in the Four Demands. After defining this goal, we should work tirelessly in the direction of achieving it. The first step after this could be a plan of mass education so that the people of Pakistan can be turned into a God-conscious *Umma*.[1]

Along with carrying out an extensive programme of education and propaganda, an Academy of Law should be established to translate works of legal importance from the Arabic language. Maududi even ventures to give a comprehensive list of the works which would have to be brought within easy reach of the modern legislator. The Academy of Law would then codify the law according to the modern pattern 'section and clause wise'. He admits that not everything in the books of *Fiqh* constitute Islamic Law and therefore only the following will have to be considered. To him it is only these that constitute Islamic Law:

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[1] Maulana Maududi elsewhere stresses the idea that education is perhaps the most important foundation of Islam. He had gone as far as to say that illiteracy, for example, is as bad as *Kufr* (disbelief). See Maududi, *Ta'limat* (Second Edition, Lahore, 1963), pp. 2-4.

"(i) An explicit commandment of God laid down in the *Qur'an*; or

"(ii) The explanations or elucidation of the Quranic commandment or an explicit order or prohibition from the Holy Prophet (peace be upon Him); or

"(iii) An interpretation, inference, *Qiyas* (analogy) *ijtihad*, or *istehsan* (juristic reference) on which there has been consensus *(ijma')* of the *Umma*; or it may be a majority decision of the *'Ulama* which has been accepted by an overwhelming majority of our own people; or

"(iv) An *ijma'* or majority decision of the nature discussed in (iii) above arrived at by our own men of learning and authority".[1]

Maududi believes that consideration of these would answer all exigencies of human life because the learned among the existing people have taken part in interpreting and evolving the detailed laws of Islam, after paying considerable attention to the existing conditions. It would appear from the above that, to Maududi, the legislature in an Islamic State is far removed from the concept of a modern democratic parliament based on the idea of the conflict of opposing views, each striving to put into practice its own political ideas and even having the freedom to change the Constitutional Law if they so desire. He conceives what he terms as legislature in a modern Islamic State as *Ahl-al-hal wa-al-'aqd* (those who prescribe and resolve). They can be elected or appointed, but he believes that ultimately in a God-conscious society election would be safer because, by its very nature, the *Umma* would elect only those that are pious and learned and honest and are aware of the intricacies of Islamic Law. This is where he seems to leave himself open to criticism. His whole idea seems to be that initially, while the *Umma* is not God-conscious, those who rule can be trusted with appointment of the membership to the assembly of *Ahl-al-hal wa-al-'aqd*, but later as time lapses and the Islamic consciousness begins to assert itself, the institution of elections could be safely brought in. It is interesting to note that wherever

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[1] Maududi, *Islamic Law and Constitution*, op. cit. pp. 115-116.

Maududi is faced with practical problems of this sort, he tends to evade them by simply regarding them as "administrative problems which can be decided upon later". The fact is that under the pious Caliphate, the *Shura* to which Maududi has given the name of *Ahl-al-hal wa-al-ʿaqd* was not an elected body, but was composed of influential Quraish Muslims and other heads of tribes who happened to be present. Maududi's view seems to be that methods of election or selection are not important; any method which suits the *Umma* can be adopted as long as the general consent of the God-conscious *Umma* is behind it.

In spite of the fact that in his state political parties such as we know are inconceivable, differences of opinion may arise, in which case Maududi prescribes that an overwhelming majority of the *Ahl-al-hal wa-al-ʿaqd* should recommend their resolution to the Amir. He does not seem to be conscious of the fact that some sort of political parties could emerge, if not on political bases, on denominational bases, among the learned. The method of framing legislation would be simply to shape the laws according to their interpretation. They would then have to detail them in the form of clauses and sections, making out rules and regulations which could be enforced. Legislative activity in the western sense is not, in the general ideological nature of the state, possible in Islam. But it appears that the legislators will have a broader sphere of activity in cases where no explicit provisions exist. In this case, they will legislate in accordance with the general spirit of Islam. "Wherever and in whatever matters basic guidance is not available from the *Qur'an* and the *Sunna,* or the conventions of Righteous Caliphs, it would be taken to mean that God has left us free to legislate on those points according to our best light. In such cases, therefore, the legislature can formulate laws without restriction, provided that such legislation is not in contravention of the letter and the spirit of the *Shariʿa*—the principle herein being that whatever has not been disallowed is allowed".[1]

How much freedom of action the legislature would have is a difficult point to ascertain. Rosenthal believes that it will be very little. It appears, however, that faced with practical problems of legislation the *Ahl-al-hal wa-al-ʿaqd* would have to classify the matters on hand and would have to decide how much freedom they as a body could have. All laws will fall into one of the following six categories and the freedom will depend on which of the categories a certain law belongs to.

1. If a certain matter is explicitly mentioned in the *Qur'an* or the *Hadith,* laws relating to this matter will be framed without any freedom of the legislature. The activity of the legislators would, in this case, be restricted to either interpreting or putting the issue in a pattern in which it can be enforced by the courts.

2. If, on the other hand, it is not mentioned explicitly, but treated by the prominent schools of *fiqh* and the necessary milieu still exists, the legislature will again be acting in the manner described in (1) above.

3. If the past jurists have disagreed on a matter not explicitly treated by the *Qur'an* and the *Sunna,* it will be up to the legislature either to choose one of the views according to the existing conditions or to bring about new *fiqh* to meet the problem by an overwhelming vote and then translate it into modern legal terms.

4. Even if the past jurists are agreed but the existing conditions deem it neccessary that a new interpretation should be effected in the light of the primary sources of the *Shariʿa,* namely the *nasus,* then the legislators would be free to develop the law in a manner that they think fit, considering, of course, the spirit of the *Qur'an* and the *Sunna.*

5. If the existing situation is neither mentioned in the *Qur'an* and the *Sunna,* nor is there available any reference to such a situation in the writings of the works in *fiqh,* the legislature will have more freedom to arrive at a decision by majority vote, taking full cognisance of the spirit of Islamic teachings, and then to translate it into modern legal terminology.

6. Cases such as may arise from modern problems, e.g., traffic laws, smuggling and such things as are dealt with in the majority of private bills in a modern legislature, would,

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[1] Maududi, *Islamic Law and Constitution,* op. cit. p. 42.

of course, be matters wherein the legislature would have complete freedom.

If we were to ask how the legislature can be prevented from perversion and overstepping its place and limitations, Maududi would answer that the legislators would have complete 'Islamic morality' and God-consciousness, so that they would know their place in the society of God, would understand their positions as vicegerents and not Sovereigns, and would act according to God's wishes at all times.[1]

Maududi's treatment of the Executive and the Judiciary is not as detailed as his treatment of the Legislature. He does not go into the principles of Public Administration, but only defines and expresses the importance of a God-fearing Executive and Judiciary. Maududi, in trying to define the Executive, says, "the real purpose of the Executive (in an Islamic State) is to enforce the directives of God conveyed through the *Qur'an* and the *Sunna* and to bring about a society ready to accept and adopt these directives for practical applications in its life,[2] and the Judiciary to function in the sphere of adjudication "in strict accordance with laws of God".[3]

Relations between the three organs of the State, Legislature, Executive and the Judiciary, are also to be governed by the Islamic Law, although there are, Maududi admits, "no clear cut injunctions on this point".[4] But he also goes on to say that the conventions of the Prophet and the pious Khilafa "afford us with all the necessary guidance".[5]

The Judiciary, he believes, must be separate from the Executive, though all believers are equal before law, including the Amir or the Head of the State. By making the Judiciary separate from the Executive, he intends to create an atmosphere in which the Judiciary would be the check on the powers of the Executive. It is, however, not clear whether he wants the Judiciary to have the power of Judicial Review. (Judiciary having power to review laws and declare them null

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[1] Maududi, *Islamic Law and Constitution.* op. cit. pp. 237-239.
[2] ibid. p. 239.
[3] ibid. p. 241.
[4] ibid. p. 241.
[5] ibid. p. 242.

and void in such cases as are not in accord with the spirit of the constitution.)

Although not above law, the Amir occupies a very important position by virtue of his being the Head of the State, symbolising the Vicegerency of God in the *Umma,* and also by being the Head of the Executive. Maududi makes very stringent demands for the qualifications of this person, giving a detailed account of the qualifications he must have before he can be considered for this office.

For fixing these qualifications, Maududi draws directly on the *Qur'an* and the *Hadith*. The Amir should be a Muslim ("Oh ye who believe! Obey Allah, and obey the Prophet and those who are in authority from among you");[1] should be male ("Men are in charge of women");[2] and ("Verily that nation would not prosper which hands over the reins of its government to a woman").[3] He should be a sane adult ("and do not make over your property, which Allah has made to you a (means of) support to the weak of understanding");[4] should be a citizen of the Islamic State ("and those who have declared their belief in Islam but have not migrated (to the Islamic State) you have nothing to do with their guardianship until they migrate").[5] The last of these is perhaps the most significant in that the earlier thinkers have always considered the concept in the light that territoriality plays no part in citizenship of an Islamic *Umma.* Iqbal is perhaps the most important example. He thought that a Muslim, wherever, he lives, is a citizen of an Islamic State and an integral part of the *Umma* of Islam. The impact on Maududi of modern Nationalism is apparent from this attitude.

But it is on the moral requirements that he lays most stress. Among the general requirements like 'God fearing', 'trustworthy', 'in good health', etc., it is included that he should be a highly learned man both in the affairs of Muslim Law, *fiqh* and *Qur'an* and the *Sunna,* and with knowledge of modern administration and other affairs of the world. In other words, he should be completely furnished with the knowledge and wisdom to be able to supervise *ijtihad*. The most important feature of these qualifications is, however, that he who deliberately seeks to put forward his candidature for the office should be disqualified.

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[1] *Qur'an*, IV. 59.
[2] *Qur'an*, IV. 34.
[3] *Al Sahih* of Bukhari.
[4] *Qur'an*, IV. 5.
[5] *Qur'an*, VII. 72.

'As regards the eligibility for the membership of the Consultative Assembly or for the post of the Head of the State, there is legal eligibility, on the basis of which an Election Tribunal or a Judge, after due consideration, may declare a person eligible or non-eligible for election. There is yet another eligibility on which the selectors, the proposers and the voters base their judgement. The first aspect of eligibility may be possessed by everyone of the millions of citizens of a state, but it is the second which actually elevates a very select few to the top. Criteria with regard to the first aspect are to be included in a few operative clauses of the Constitution. But the standards, for the second aspect of eligibility must permeate the spirit of the entire constitution. The success or otherwise of any constitution would depend on the fact that the minds of the masses have or have not been trained properly to elect only those who are eligible for those august positions in accordance with the spirit of the Constitution rather than its *form* only".[1]

Maulana Maududi believes that the Amir and the Legislator could be elected or selected by any agreed method by the *Umma*. Direct or indirect election or appointment followed by the oath of allegiance, or any variations of these methods, could also be adopted by the constitution making body. He is of the opinion that none of these methods are un-Islamic as long as the spirit of Islam is embodied in the constitution and the electing body is fully conscious of the principles involved. To support this view, he draws upon the various methods by which the four first *Khalifas* of Islam came to hold their office.

Among his functions as Head of the State and the Executive, are legislative powers amounting to a complete veto over the decisions of the *Ahl-al-hal wa-al-'aqd*. The decisions of the Legislature would not be binding on the Amir. This is be-

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[1] Maududi, *Islamic Law and Constitution*, op. cit. p. 260.

cause, theoretically speaking, only the Amir is the *Mujtahid* by virtue of the authority vested in him by the *Umma*, so only he can effect *Ijtihad*.

The *ahl-al-hal wa-al-'aqd* are only people whom he chooses to employ for his aid in matters of legal and constitutional importance. He may even ask the *Umma* to elect them for his help, but even in that case they are merely his aids and he may refuse their advice in matters of *ijtihad*. The only time these people would play an important part is when the Amir has acted in contravention of *Shari'a* and the *Umma* desires to remove him from office. But even here they would not take action as members of the *Ahl-al-hal wa-al-'aqd*, but as more learned and thus more influential members of the *Umma*. This has been introduced to bring about checks and balances in the political set up of the State. However, Maududi does not make a clear study of the problems arising from cases where the Amir would have to be removed and leaves it to the constitution maker to devise an administrative system of some kind.

One could summarize the ideas behind his work for the promulgation of an Islamic State in Pakistan by saying that the Prophet's mission was to preach not only that God was the Creator of the whole universe but also that He was the sole Sovereign. The real mission of the Prophet was to deliver man from the injustice born of man's assuming the rights of God over other men.[1] "The basic principles of Islamic politics are that individually and collectively human beings should waive all rights of legislation and all power to give commands to others. This right is vested in Allah alone."[2]

The Islamic State is not democratic, because democracy permits the laws be changed at the will of the majority, even if the majority is wrong. The laws of God, or *Shari'a,* are not limitations of freedom, but are a guarantee of the freedom. The laws of the *Shari'a* regarding the poor tax, prohibition of interest and gambling, inheritance, and the rules regarding earnings and spendings which prevent class war, capitalist oppression, and the dictatorship of the proletariat are some examples.[1] Harmony in the society is preserved by the laws regarding the segregation of the sexes, men's supremacy over women, rights and duties of the partners in matrimony, conditional polygamy, and the laws of retaliation, prohibition of alcoholic drinks, all of which regulate human behaviour.[2] Above these are the basic constitutional rules and principles set by the *Qur'an* and the *Sunna* to be followed for the establishment and preservation of God's will on earth.

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[1] Maududi, *The Political Theory of Islam*. (Pathankot October, 1939) p. 25.

[2] ibid. pp. 27-28.

The constitutional principles are enacted by God and He is the Sovereign in the legal sense. A government is only entitled to obedience for as long as it acts in accordance with the postulates of the *Shari'a.* No distinction in the citizenship may be made on the basis of class, colour, caste, birth, social status or profession.[3] The right to administer the state rests on the whole community as the Vicegerents of God.

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[1] ibid. p. 38.
[2] ibid. p. 39.
[3] ibid. pp. 49-50.

CHAPTER VI

THE CONCEPT OF JIHAD

(i) Jihad in History

The State in Islam was regarded as the instrument for universalising a certain religion; it had, perforce, to be an ever-expanding state. The Islamic State, whose chief function was to put God's law into practice, sought to establish the Islamic ideology as the dominant force over the entire world. It refused to recognise the principle of co-existence with non-Muslim communities, except perhaps as subordinate communities. Although this was not a consciously formulated policy, Muhammad's early successors, after Islam became supreme in Arabia, had to embark upon a ceaseless war for the sake of Islam. Jihad was therefore employed as an instrument of universalization, self-defence, and the establishment of a universal world state.

This mission of Islam was rapidly and successfully carried out during the first hundred years of its history, and Muslim dominance began to extend over the major portion of Asia. But the expanding Muslim state could not expand *ad infinitum,* and, accordingly, the world became divided into the World of Islam, or Peace, *(dar-ul-Salam)* and the World of War *(dar-ul-Harab).* On the assumption that the ultimate aim of Islam was to bring the truth of God to the whole world, the *dar-ul-Salam* was theoretically always at war with the *dar-ul-Harab.* The Muslims were required to preach Islam by persuasion, and the Caliph and his commanders in the field to offer Islam as an alternative to paying the poll tax or fighting. The Islamic State was under legal and theological obligation to enforce Islamic Law and to recognise no other authority. Failure of non-Muslims to accept Islam, or refusal to pay poll tax, made it legally binding upon the Muslims to declare *Jihad* against them. Thus *Jihad* became an instrument of protecting the *dar-ul-Salam* and also transforming the *dar-ul-Harab* into the *dar-us-Salam* when the other peaceful methods failed.

(ii) Doctrine of Jihad

The term *Jihad* is derived from the verb *Jahada,* which means 'exerted'. Its meaning to the Muslims is exertion of one's utmost endeavour in the path of Allah, that is: the spread of the belief in Him and also the endeavour to establish His Will in the world. The individual's recompense would be the achievement of salvation in the world hereafter, since *Jihad* is the direct way to paradise.

"O ye who believe! Shall I lead you into a bargain which will save you from a grievous penalty? That you believe in God and his apostle, and that Ye strive (your utmost) in the Cause of God with your possessions and your persons: that will be best for you if you but knew. He will forgive you your sins and will admit you to gardens beneath which rivers flow, and to the beautiful mansions of Gardens of Eternity: that is indeed the Supreme achievement".[1]

Jihad (in the broad sense of "exertion") does not necessarily mean only war or fighting, since exertion in Allah's path can be non-violent. *Jihad* may be regarded as a form of religious propaganda that can be carried on either by persuasion or by the sword. In the early Meccan revelations, the emphasis was on persuasion. The Prophet, in the discharge of his functions, seemed to have been satisfied with warning his people against idolatry and inviting them to worship one God. This is shown by such verses as the following:

He who exerts himself, exerts himself
only for his own salvation.[2]

This verse expresses *Jihad* in terms of salvation of the soul, rather than a struggle for proselytization.[3] Some interpretors of the Qur'an go as far as saying that because the word *Jihad* is used in the *Qur'an* more often in the meaning of strife towards achieving the will of God than in the meaning of actual war, we must re-examine our concept of *Jihad*. In the Medinian revelations, however, *Jihad* is often expressed in terms of fighting or war.

Taking note of the different connotations in which the word *Jihad* is used in the *Qur'an*, the Jurists have distinguished four kinds of *Jihad*. The first is concerned with combatting

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[1] *Qur'an*, LXI, 1). 13.
[2] *Qur'an*, XXIX, 5.
[3] Most commentators of the *Qur'an* give this verse a meaning in that sense. See for instance *Sarakhasi Commentary* (Hyderabad, A. H, 1335, Vol. 1), p. 126 and A. Yusuf Ali's *Translation and Commentary of the Qur'an*, foot note, 3426.

the Devil and is an attempt to escape his persuasion to evil. This is regarded as the greatest *Jihad*. The second and third are concerned with supporting right and correcting wrong. The fourth is concerned with war taken up for the pleasure of Allah, for both universalizing Islam and defending it.

(iii) Maududi's Attitudes towards Jihad

Maulana Maududi's concept of *Jihad* is contained in two important works, namely *Al-Jihad fil-Islam*, first published in 1930, and a smaller book entitled *Jihad-i-fi sabilillah*. Both these works begin with an apologist note. The preface to the larger work carries a reference to a statement by Mr. Gandhi who is quoted as saying that 'Islam took its birth in an atmosphere whose decisive force has been the sword and will remain the sword'. The Maulana then explains that his purpose in undertaking the authorship of the book about the concept of *Jihad* is mainly to refute this statement. The second book also begins with the same apologetic note and refers to the western understanding of the concept of *Jihad*. He says that the word Jihad has been equated by Western writers with 'Holy War' and that it has been interpreted and explained in this way for such a long period that it has become synonymous with war undertaken by religious fanatics. He asserts that Islam is not a religion in the ordinary sense of the term, allowing the concept of beliefs to be a private matter and having nothing more than a few customs and prescribed methods of worship of its own; nor are its adherents a nation in the ordinary sense. It is because of these two basic misunderstandings that *Jihad* is understood to mean Holy War or a war undertaken by religious fanatics for the spread of religion. Islam, to Maududi, is an International Revolutionary Movement which strives to bring the world into accordance with its ideals. *Jihad*, in fact, is a struggle undertaken by the members of the party of Islam to bring their cherished ideals into practice. He says, "Like all other revolutionary movements, Islam has also carved out its own phraseology in the shape of terms to explain its concepts, either because the older terms were inadequate for explaining its essence, or because the completely new emphasis on life required their development. *Jihad*, Maududi says, is one of those terms. The word *Harab* (meaning War) was discarded because it was attributed to war undertaken to fulfil individual or collective material needs of a society. The dictionary mean-

means 'exerted'. Its meaning to the Muslims is exertion of one's utmost endeavour in the path of Allah, that is: the spread of the belief in Him and also the endeavour to establish His Will in the world. The individual's recompense would be the achievement of salvation in the world hereafter, since *Jihad* is the direct way to paradise.

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As in his whole system, Maududi, when talking about *Jihad,* ignores all the subsequent history of the Muslims and draws his references from the *Qur'an* and the *Hadith,* and relatively less from the first four Caliphs. His attitude seems to be purely theoretical. This results from the fact that he, like many other recent Muslim writers, differentiates between Islamic history and Muslim history. When explaining *Jihad,* his purpose is to bring to the light that concept of *Jihad* which is included in the *Qur'an* and to disregard any subsequent developments by stressing that these were not in the true Islamic spirit. Maududi divides *Jihad* into two kinds: the Defensive, and Corrective or Reformatory. The *Jihad* of the first kind is the war which is undertaken to protect Islam and its adherents against either an external enemy or the disruptive forces within the *Dar-ul-Salam. Jihad,* he says, can also be fought against those who have brought tyranny on the Muslims living in their country. In all, Maududi lists three conditions of defensive *Jihad.*

(a) **Tyranny.**

Maududi says that Islam gives full support to any Muslim peoples to fight against any kind of tyranny. This is one of the conditions in which *Jihad* can be fought. He quotes: "To those people against whom war is fought, permission is given to fight because they are wronged and God has power to come to their aid. These are those people who have been unjustly made homeless because they say that Allah is their Lord and for no other reason". *(Qur'an* XXII, 39:40); and again: "Fight in the cause of God those who fight you, but do not transgress limits: for God loveth not transgressors. And slay them wherever ye find them and turn them out from where they have turned you out; for tumult and oppression are worse than slaughter". *(Qur'an,* II: 190-191).

From these two verses of the *Qur'an,* the following principles can be derived:

i) That *Jihad* can be declared when the Muslim community or a part of the Muslim community is tyrannised.

ii) That *Jihad* can be declared if the Muslims are deprived of their material possessions, their homes, and their just rights.

iii) That *Jihad* can be declared if the Muslims are suppressed for the reason that they are Muslims and would not worship any other gods but God.

iv) The Muslim community is asked by Allah to struggle for the re-possession of the land and homes, for political domination of the parts which were taken away from them by the non-Muslims, and to bring the law of God again to that place.

(b) **Guarding Truth.**

The second condition is that the Muslims should declare *Jihad* against only those infidels who prevent the truth of God from prevailing in the world. It is only against those disbelievers that *Jihad* can be declared.[1] This condition could be interpreted in a very loose sense.

Although Maududi tries to justify his view here, and attributes this condition only in the case of those non-Muslim states which have done wrong to the Muslim community, taken loosely it could be applied to any non-Muslim state, and *Jihad* could be justified against any neighbouring state. I think it is this aspect of *Jihad* which has been interpreted by western writers to mean that *Jihad* denotes all wars undertaken by the Muslims against a non-Muslim community, and which has been the cause of the general misunderstanding that *Jihad* is synonymous with war.

(c) **Dishonouring Treaty Relations.**

In this respect, Maududi draws on the *Qur'an* again:

"They are those with whom thou didst make a covenant, but they break their covenant every time and they have not the fear of God. If ye make mastery over them, disperse them, and with them those who follow them, that they may remem-

[1] Maududi, *Al jihad fil Islam,* (Islamic Publications Ltd., Lahore, 1962), pp. 48-50.

ing of *Jihad,* on the other hand, is "strife", and therefore it could explain the struggle undertaken in the path of Allah to establish His will on earth. *Jihad* to the Muslims is not simple strife but *Jihad-i-fi sabilillah* (Strife in the Path of Allah), and it includes whatever a member or members of the revolutionary party set out to do, not for any worldly motives, but for the pleasure of God. Maududi quotes from the *Qur'an:* "Those who believe in the Cause of God struggle in the path of God, and those who disbelieve fight in the cause of force". (IV.76).

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(c) Dishonouring Treaty Relations.

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"They are those with whom thou didst make a covenant, but they break their covenant every time and they have not the fear of God. If ye make mastery over them, disperse them, and with them those who follow them, that they may remember. If thou fearest treachery from any group, throw back their covenant to them so as to be on equal terms, for God loveth not the treacherous". (*Qur'an* VIII, 56:58). This implies that until and unless a non-Muslim state dishonours treaty relations it is not correct to go to war against it.

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[1] Maududi, *Al jihad fil Islam,* (Islamic Publications Ltd., Lahore, 1962), pp. 48-50.

The Maulana, in the face of pressure from the people and the Government of Pakistan, went so far as to declare that according to this tenet, the war in Kashmir is not *Jihad* and therefore not a just war, and that unless all the treaty relations with the Indian Union are broken, all those who fight and die in Kashmir are not fighting and dying in the path of Allah. This gave rise to a great controversy, and subsequently the Maulana had to spend the better part of three years in gaol. (This is discussed in greater detail elsewhere).

Apart from these conditions, *Jihad* is justified against those who serve as a disruptive force against the community of Islam although they seek protection from Islam. They may or may not declare that they are Muslims. It is also incumbent upon the community of Islam to go to the help of those Muslims who have been wronged by another community. "And why should you not fight in the cause of God and those who, being weak, are ill-treated (and oppressed)? Men, women and children whose cry is 'Our Lord rescue us from this town, whose people are oppressors: And raise for us from thee one who will protect and raise for us from thee one who will help'."

The other aspect of *Jihad* deals in the strict sense with personal betterment and endeavour for justice in a purely non-violent manner. Maulana Maududi divides this aspect of *Jihad* into main branches which he calls *Amar bil-ma'ruf* (the inculcation of the known good within one's own self) and *Nahi 'an al-munkar* (securing one's own self and preventing others from wrong).

(iv) The Sword and the Spread of Islam

Even when dealing with Western criticism that Islam spread by the sword, Maulana Maududi restricts himself to the theoretical aspects of Islam and does not enter into discussion of historical aspects. He concentrates purely on the Quranic injunctions and endeavours to answer the objections from a purely theological point of view. He endeavours to clear Islam from this blame, and not the Muslims, and draws on such verses of the *Qur'an* as "He who takes the life of another person unless this person has either taken the life of another or has spread mischief in the land, it would be as if he slew the whole humanity", (*Qur'an* V:35), and says that verses like this restrict the scope of *Jihad* and make it justifiable only in the conditions prescribed by the *Qur'an*. He also quotes the *Hadith*, according to which a person whose two sons were Christians came to the Prophet to ask whether he should force the religion of Islam on to his sons and show them the truth by compulsion. The answer to this came in the form of a verse: "there is no compulsion in religion". From this, the Maulana draws the conclusion that those who say that the basic reference of Islam has been force and will remain force are wrong.[1]

The Maulana frequently compares the concept of war in Islam with Western practices rather than ideals, and ignores Muslim practices. Maududi's writings, like those of Rashid Rida, hold frequent hostile references to the western civilisation. But he recognises the challenge that the modern world has for Islam, and accepts the modern civilisation so far as its scientific advancement can help in the recovery of his country and hence Islam. *Jihad* is a binding duty of all Muslims, but they must begin this Jihad first by correcting themselves *(Amar bil-ma'ruf)*, and then go on to correcting others through instructions *(Nahi 'an al-munkar)*, entering into a war only if the conditions set for the justification of *Jihad* make it necessary. The Maulana had declared that the recent war fought against India was a *Jihad* on the part of all Muslims because we had to preserve this politically demarcated land known as Pakistan for Islam. He recognised the fact that Pakistan was not an Islamic State, but asserted that it is the wish of the Muslims living in it that it should be and therefore its preservation for Islam is a duty binding on all Muslims.[2]

(v) Jihad as *Bellum Justum*

War is considered to be just, whether commenced and prosecuted in accordance with the necessary formalities required under a certain system of law, or waged for justifiable reasons in accordance with the tenets of religion or the morals of a certain society. In Islam, as in ancient Rome, both of these concepts were included in the doctrine of *bellum justum* since a justifiable reason as well as the formalities of prosecuting the war were necessary. In both Islam and Rome the war had to be not only *justum,* but also *pium,* that is in accordance with the sanctions of religion and the implied commands of God.[1] In the *Politics,* Aristotle refers to wars which are just by their very nature. The Romans instituted a body *(jus jituale)* to formulate rules of waging wars in a just manner. In the *Offices,* Cicero, who may be regarded as the representative legal philosopher of Rome, has discussed the rules of waging war, and its formalities, in an attempt to constitutionalise *Bellum justum.*[2] St. Augustine's concept of the Just War was formulated under the influence of Cicero. St. Thomas Aquinas, who is said to have been acquainted with the Muslim writings, formulated and developed his theory of Just War along lines similar to the doctrine of *Jihad.*[3] The Natural Law theories of the sixteenth, seventeenth and eighteenth centuries were then in turn influenced by St. Thomas and other Medieval writers. Grotius, the father of modern law of nations, developed his system under the impact of the Natural Law theory of Just War.

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[1] Maududi, *Jihad fil Islam*, op. cit. pp. 126-127.

[2] Maududi, "Hamara dafai Hisar Islam Hay" and "Jihad abhi Jari Hay" in Kalim Nashtar, *Pak Bharat Jang* (Maktaba-i-'Aliya, Lahore, October 1965), pp. 172-177 and pp. 185-190.

Jihad assumes a special juridical order in Islam because law and religion here form a unity. The law prescribes the way to achieve religious purposes, and religion provides a basis for the law. In Muslim theory, Islam and *shirk* (associating other gods with Allah) cannot exist together in this world. It is the duty of all believers, and also of the *Imam,* to see that the Will of God is carried out in His world and also to become the guardians of this world in such a way as not to allow the infidels to be disruptive or ungrateful for His favours. *Jihad* is a sanction against polytheism, apostacy, and also refusal to submit to rules of *Shari'a,* such as refusal to pay taxes.[4] *Jihad*

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[1] J. Von Elbe "The Evolution of the Just War in International Law": *American Journal of International Law,* (Vol. XXXIII, 1939), pp. 665-688.

[2] Cicero, *Offices, Essays and Letters* (Everyman Edition, London 1953). Bk. 1, 11-12.

[3] D'Entreves, A.P. *Aquinas; Selected Political Writings* (Oxford 1948), pp. 59-60.

[4] A series of battles were waged by Abu Bakr, the first Caliph, when certain tribes refused to pay taxes after the death of the Prophet. These wars came to be known as the Wars of Apostacy.

therefore may be defined as the struggle between Islam and polytheism, a form of persuasion to be exerted upon those who refuse the Word of God, and upon renegades from the faith. Thus in Islam, as in Western Christendom, the *Jihad* can be the *Bellum justum.*

The modern concept of *Jihad,* as understood by Maulana Maududi, takes its origin as much from the classical theory as from the apologist school of Muslim writers in the nineteenth and early twentieth centuries.

CHAPTER VII

ECONOMIC STRUCTURE OF THE ISLAMIC STATE

Abul A'la Maududi believes that, as for all other aspects of life, Islam prescribes a system of economics as well. Further, as in other matters such as constitution, law, war, and the position of women, it gives the bare essentials and leaves the rest of the details for the *Umma* to work out through *ijtihad*. His ideas on matters of economics and fiscal policy are mainly included in two works, namely *Sud*, (*Islamic Publications*. Lahore, 1961) and *Islam aur Jadid Mu'ashi Nazriyat* (Islamic Publications. Lahore, 1959).

To him the basic essentials of the Islamic economic system are that:

(a) Islam prescribes a free system of ownership and commerce within the limits prescribed by *Shari'a;*

(b) Islam makes a distinction between permissible methods of earning and non-permissible methods of earning in the acquisition of money;

(c) Islam prohibits the saving of money in large amounts;

(d) Islam prohibits Usury and interest in all commercial and industrial matters;

(e) Islam prescribes tax on savings *(Zakat);*

(f) Islam prescribes that after the death of a person his property should be divided between his dependents and relations in accordance with prescribed method, thus preventing accumulation of money and capital in too few hands; and finally;

(g) Islam prescribes that booty acquired through war should be divided between the soldiers and the state.[1]

It is believed by Maududi that once a monetary and economic system is devised to incorporate these seven principles, the whole economic problem of the world will be solved. One feels, reading through his exposition of economics, that he is writing as a layman. After his study of law and other aspects of Islam, his tackling of the economics appears rather an anti-climax. Without offering any more criticism of his study of economics, it will serve a useful purpose to go directly into his views.

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[1] Maududi, *Islam Aur Jadid Mu'ashi Nuzriyat* (Islamic Publications, Lahore, 1959), pp. 12-15.

He believes that Islam has created an intermediate system of economics between the extremes of the Capitalistic and Communistic systems. In the first place, Islam creates a moral and practical bond between man and society on which the edifice of a community can be built. This is so because Islam creates in every individual a moral attitude which is essential as the basis of a balanced society. Islam sets certain limits to human freedom so that an individual can be useful to society rather than destructive of it.

Maulana Maududi admits his lack of deep knowledge by his being sceptical of specialists. He says that we should be a happier society if we looked at the world as a whole, and not as physicists, psychologists or economists; and that we should learn much more about the world around us if we looked at the whole scientific and social process and tried to find the solution to the problems of man through doing so.

He is, in fact, defying the scope of economics when he sets down the basic problem of man, which he says is to "keep all men supplied with the necessities of life and to see that every individual in society is provided with opportunities adequate to the development of his personality and to the attainment of the highest possible perfection according to his capacity and aptitude."[1]

In earliest times, the economic problems were simple, as man could secure his needs simply in a world of abundance. But with the advent of civilization they became increasingly complicated when specialization came, so that the necessities of life began to be exchanged. Gradually, means of exchange were evolved and established.[2] With the development of trades and professions, a system of purchase and sale developed, and coinage became established as a means of exchange. With this the rights of property and succession developed. It then became necessary that:

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[1] Maududi, *Economic Problem of Man and Its Islamic Solution* (Markazi Maktaba Jama'at-i-Islami, Lahore, 1955), p. 12.

[2] ibid. pp. 16-18.

1. Owing to the natural disparity between the potentialities and powers of the individuals, some individuals would be able to earn and produce more than they needed, while some would be able to secure only their basic necessities, and others would get even less;
2. Some individuals would be able to secure a better start in life in consequence of inherited wealth;
3. Owing to the operation of natural causes, there would be some individuals in the society who could not perform productive work, for example the aged, children, the sick and incapacitated persons.

Maududi says that any workable economic system must take full cognizance of these basic factors and create a system of economic exchange which would solve the problems arising from these basic needs. He then goes on to examine the two existing principal systems to see if they solve these basic problems. Both the Communist and the Capitalist systems are examined and criticised, and the Islamic economic system is offered as an alternative. To him the fault with the Capitalist system lies in the evils which appear "when the natural selfishness of man exceeds the limits of moderation".[1] This, he says, develops with the aid of certain other immoral habits and receives further impetus from an inherently defective political system which has no moral basis.[2] On the other hand, to remove private ownership of the means of production, as in the Communist system, would create many other problems; but he does not explain what these problems are, at this stage. In his other work, *Sud,* he criticises Communism because it takes away the incentive for the individual and also because it is "unnatural" to take away the right of ownership from the individual. Again he says that it is in the "natural scheme of things" that some individuals should be better placed than the others, but that no evil effects would flow from this if all man's moral qualities had the opportunity to assert themselves. And these, we must suppose, can only be followed to assert themselves in a truly Islamic State under a system created in accordance with the *Shari'a.*

In the capitalist economic system, which is devoid of a moral basis, if the earnings of a person become larger than his needs, he does not distribute them among those who need, but either employs his wealth to produce more or lends it on interest to others. Islam prohibits by law any kind of interest and morally binds a man not to accumulate more wealth but to give away in charity all he does not need. Maududi is not in favour of creating coercive laws to see that people do not earn beyond what they need, and so if at some stage one individual did try to accumulate more money than he needed, it would not be possible to stop him.

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[1] Maududi, *Economic Problem of Man and its Islamic Solution,* op. cit. p. 19.

[2] ibid. p, 20.

In his criticism of the Capitalistic System, he is a Marxist in asserting that, owing to disparities between the very rich and the very poor created by the absence of a moral system, a class struggle comes into being between those who have and those who do not.[1] He says that Islam prevents this evil by differentiating between *Halal* (lawful) and *Haram* (un-lawful) methods of earning. It is for this purpose, apart from charity and goodwill, that Islam has prohibited all those methods of gain whereby one individual secures an advantage at the expense of injury and loss to another. These are:

1. Bribery
2. Stealing
3. Gambling
4. Business based on fraud
5. Hoarding and holding back necessities of life to raise prices
6. Monopolising means of production by one or few persons, and so narrowing the field for others.
7. Selling, manufacturing or transporting wines and other intoxicating drinks
8. Earning from adultery and professions in music and dancing.

Although his study of the existing economic systems has a great deal of thought behind it and he goes to great lengths to prove that the Islamic economic system is the middle road between the two extremes, he has not given much thought to international trade. A modern Muslim state exists in a world in which it has to trade with other countries to survive, and

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[1] Maududi, *Economic Problem of Man and its Islamic Solution* op. cit. p. 28.

international trade is based on an International monetary system, which in turn is based on Interest. A state which completely repudiated Interest would become economically isolated.

Some modern interpreters of the *Qur'an* have said that Islam prohibits not interest but usury. Maulana Maududi does not agree with this. The verses of the Qur'an which are said to be against the concept of interest are quoted by him and are given below.

> "Those who devour *riba‘*[1] will not stand except as stands one whom the evil one by his touch hath driven to madness. That is because they say: 'Trade is like *riba‘*, but God hath permitted trade and forbidden *riba‘*.[2] O ye who believe, fear God, and give up what remains of your demand for *riba‘*, if you are indeed believers".[3]

Muhammad Asad and Ghulam Ahmad Parwaiz are of the view that 'interest' is allowed, for they interpret *riba‘* to mean usury. They hold that banks should be allowed to lend money for the development of industry to bring about better employment prospects in an Islamic State.

The existing monetary system is based mainly on John Maynard Keynes's (1863-1946) Liquidity Preference Theory of Interest. Before Keynes put forward his theory, the monetary system was based on the Classical theory known as the Loanable Fund Theory. This had stated that the world progress was retarded because funds were not available for the purposes of loan-for-investment. In other words there was no capital formation. And there was no capital formation because people did not save. But during the great depression of 1929-33, a device to increase the loanable funds was made use of by lowering the bank rate both in Britain and in the USA. The Rate of Interest was lowered so that the business man might feel tempted to borrow the money and invest in business and so relieve the mass unemployment prevailing because of the economic depression. But businessmen did not come forward to take advantage of the increase in loanable funds. This gave

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[1] The *Qur'an* uses the term *riba*, which means "*increased*". Some authorities have interpreted it as usury, while others, including Maududi, include interest in *riba*.

[2] *Qur'an*, 2; 275.

[3] *Qur'an*, 2: 38.

Keynes the idea of his Liquidity Preference Theory, which he elaborated in his work *The General Theory of Employment, Interest and Money* in 1936. He said that during a depression the marginal efficiency of the Capital (or the expected rate of profit) is so low that to be anywhere near useful as an incentive, the interest must be zero. But the rate of interest is never zero, or negative, because there is always land available for sale and a person can buy land and charge a rental on it. Thus as long as there is an acre of land anywhere, there cannot be a zero interest. Thus moneyed people will compete with one another to raise the capital value of this piece of land, thus depressing the rate of return from this piece. They will equate the rate of return from the land to the rate of interest on their money. It will be very low but never zero. The investing public will also prefer to keep their money in liquid cash on hand because it is a period of falling prices and the capital value of money is increasing every day. Maududi would surely say that the *Zakat* of two and a half per cent on savings at such a stage would bring about the solution. But, as it happens, the rate of 2½% is too low and would not produce enough money or incentive in case of a depression. And as *Zakat* is basically a voluntary tax, it will in practical terms be even more difficult to procure on savings about which the state is ignorant.

CHAPTER VIII

THE POSITION OF NON-MUSLIMS IN THE ISLAMIC STATE

To justify the secondary position which the non-Muslims would occupy in an Islamic State, Maududi explains at the outset that Islam provides for an ideological State, not unlike a State under Communism, and therefore only those who believe in its ideology can be trusted to formulate policy and establish ideals. It is for this purpose that he outlines the differences between a modern National State and the State conceived and established through the spirit of Islam.

(a) A National State, he says, classifies its citizens in accordance with their belonging or not belonging to the nation or race which has established that state or which dominates it or is responsible for running it.

The Islamic State, on the other hand, classifies the people residing in it according to their belief or disbelief in the ideology which constitutes the basis of the state. In other words, the people are classified into Muslims (those who believe) and Non-Muslims (those who do not).

(b) The task of guidance and policy-making in a modern National State always remains in the hands of the majority community. The minority have no effective say in the matters of governing. They are not trusted, irrespective of the nature of their minority—social, cultural, religious; they are not considered capable, of shouldering the responsibilities of the State. In many cases the constitutions of some of the National States abolish any kind of discrimination, but laws are not enough to bring about total avoidance of discrimination.

On the other hand, the ideological nature of the Islamic State makes it necessary that policy-making and cultural and educational planning should be in the hands of those who believe in the ideal. Non-Muslims will have to keep out of the framing of policy because they do not believe in the philosophy which inspired the principles of the system which the believers want to implement.

(c) A search into history would show that minorities have always been unfairly treated in National States. They have been weakened by having cultural inroads made upon them by the majority, thus destroying their separate identity, or have been physically exterminated by genocide. Those who have remained have been reduced to living as untouchables or to being ashamed of their cultural or religious heritage. On the other hand, in an Islamic State *Shariʿa* would provide clearly stated rights and privileges which the State authorities would be obliged to put into practice, ensuring the well-being of the Non-Muslim communities.

(d) Whatever rights and privileges for minorities exist in modern States, they exist at the sanction of the majority communities, and those who have given these rights have power to curtail them if they so desire. In the Islamic law these rights have an inalienable status and no human power can challenge them. "This is why", says Maududi, "the term *ahl-al-Dhimma*[1] (those who are guaranteed) has been used for them. The Muslims cannot curtail these rights but if they so desire, they can confer additional rights upon minorities subject to their being not opposed to *Shariʿa*.[2]

(i) Nature of Jizya

The question of the position of the non-Muslims in an Islamic State is intimately tied up with the nature of *Jizya*.[3] *Jizya* is explained as meaning the tax which the non-Muslim subjects of a Muslim government pay for ratifying the compact that ensures their protection. The word *Jizya* is derived from *Jaza*, meaning 'he gave satisfaction' or 'he compensated'.

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[1] In the Statute of Medina, the Jews and their clients were referred to as the *Dhimma* of God,

[2] Maududi, *Islami Riyasat* (Urdu) (Islamic Publications Lahore, 1962), pp. 239-241.

[3] *Jizya* was originally a tribute paid by the subject states, which took the form of poll-tax. During Umar's *Khilafa*, the term was also applied to the land tax which was levied on Muslim owners of agricultural land. Later the Jurists began to make a distinction between poll-tax (levied on non-Muslim subjects) and the land-tax which came to be known as *Kharaj*. Thus, the term *Jizya* was to be applied only to tax paid by non-Muslims as a protection tax.

In the *Qur'an, Jizya* is spoken of only once: "Fight those who believe not in God from amongst those who have been given a book (Christians and Jews), until they pay the *Jizya* in acknowledgement of your superiority and their state of subjugation".[1] The Prophet had made treaties with the Magians of Bahrain and Christians of Ayla, Adhruh and Najran on the condition that *Jizya* would be paid.

The term *ahl-al-Dhimma* is used for the non-Muslim citizens of an Islamic State. This shows that the *Jizya* was a compensation for protection. In other words, it could be explained as a contribution paid by the non-Muslims towards the military organization. The fact that the non-Muslims could be excused from its payment if they offered to fight along with the Muslims against aggressors proves this point. There is at least one case in which *Jizya* was returned on the realization that Muslims could no longer protect the *ahl-al-Dhimma*.[2] It is not an essential part of the *Shariʿa* law that the non-Muslim population is obliged to pay *Jizya:* this is clear from the fact that Bani Taghlib, a Christian tribe, were granted the option of paying instead of *Jizya* the normal *Zakat* (a two and a half per cent tax on savings which have not been reinvested, drawn at the end of every year, payable for all Muslims) during the *Khilafa* of 'Umar. As the Practice of the first four Caliphs forms an integral part of the *Shariʿa*, there seems no reason why a non-Muslim community in a modern Islamic State could not request the same.

Jizya was collected originally at the rate of one *dinar*[3] per annum for each physically fit male adult. Later the *ahl-al-Dhimma* came to be classified into three categories according to their earnings, the rich paying four *dinars,* the middle group two *dinars* and the lower earning group one *dinar* a year.[4] Females, people who had not achieved majority, old people, the crippled and paralysed, the blind and the very poor were exempt. In fact only those who could perform military service were taxable.

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[1] *Qur'an:* 9-29.

[2] The Muslim forces returned the amount collected as *Jizya* to the people of Khums in Syria when during the struggle with the Roman Empire the Muslims had to withdraw from the city and could no longer continue to protect its inhabitants.

[3] The *Dinar*, a Gold coin, could be valued at approximately ten shillings or twelve rupees.

[4] Hanafi law allows this classification, but the Shafi school holds the opinion that the amount fixed at one *Dinar* could not be changed.

Maulana Maududi divides the non-Muslim citizens of an Islamic state into three categories according to the way in which they came to be in an Islamic State. He believes that each one of these categories has a separate status in the eyes of the *Shari'a*. His classification is as follows:

(a) those who became the citizens of an Islamic State as the result of a treaty (the contractees);

(b) those who become the subjects of an Islamic State after suffering a defeat in war (the conquered);

(c) those who happened to be in an Islamic State in any other way not involving war.[1]

Maudidi holds that so far as the general rights of the non-Muslims are concerned all these three categories have to be treated alike. However, because the first two categories present special problem, the *Shari'a* explicitly provides for them prescribing special principles of treatment. In the case of contractees, the contract should always be respected. Whether the contract has been signed as the result of war or otherwise, it has to be obeyed even if the Muslims later realise that its terms are distasteful to them. In no case are these terms of contract to be amended arbitrarily, not even in cases of indemnity or payment of revenue *(Kharaj)*.[2] This would mean that unless the terms of the contract so provide, a tax increase of any kind which the Muslim *'Umma* would be obliged to submit to, would be illegal in the case of the non-Muslims. Here he enters into one of his favourite discussions regarding the practices of the "so-called civilized nations" of the West, and compares these practices with the injunctions of Islamic teachings. He holds that civilized man has always maltreated his contractees and repudiated treaties, once the immediate purpose for which they were concluded has been served. Maulana does not seem to recognise that it is always fallacious to compare the ideology of one system with the practices of another. He does not mention the fact that invariably even Muslim practices have fallen short of the ideal which Islam has put before them.

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[1] Maududi, *Islami Riyasat*, op. cit. 342.
[2] ibid. p, 343.

The people who continue to fight and do not lay down their arms until they are over-powered come into the second category, namely, the conquered. But in Maududi's opinion a compact with them is established automatically as soon as the Muslim power begins to accept *Jizya* from them. After this they continue to enjoy the ownership of their properties, and their heirs retain the rights of inheritance according to their own personal law. They also possess full rights of sale, transfer, grant and mortgage of all property. The Islamic State has no right to dispossess them of these rights. Their places of worship also, at the payment of *Jizya*, become protected institutions, *Jizya* itself has to be appropriated at a rate acceptable to them according to their financial condition, and it has to be reasonable. Once again those who are destitute or physically handicapped, women, minors, etc., are not to be asked to pay *Jizya.*

"*Jizya* is levied", Maududi says elsewhere, "only on those who have either fought against Muslims or who are *able bodied and can fight against Islam*".[1] By saying this, he changes the whole nature of *Jizya*. We have seen that *Jizya* was a tax of protection which the Muslims gave to the *ahl-al-Dhimma*. According to this statement, *Jizya* becomes a price for their potential disloyalty. This statement brings down the whole argument that *Jizya* was introduced as a tax for the protection which the *Dhimmis* received. Although most of his treatment of the minorities in an Islamic State seems liberal, this statement exposes his conservatism. Although this is only a short statement as opposed to his detailed discussion of the subject earlier, it seems more in line with conservatism.

For those non-Muslims who happen to be in an Islamic State for any reason other than either being conquered or having accepted a contract, the general rights are the same as those prescribed for the first two kinds. However, Maududi is of the opinion that in respect of payment of *Jizya,* the *Shari'a* is not explicit. His view is expressed in one of his lesser-known statements, made in a reply to a question addressed to him in the capacity of editor of the *Turjuman-ul-Qur'an*. He stated, "The provision of payment of *Jizya* by the *ahl-al-Dhimma* in an Islamic State is only applicable to either the 'conquered' or the 'contractees' who have accepted the dominance of the Muslim people under the condition that they will pay *Jizya*. In Pakistan, because none of these conditions are applicable, it is not necessary under the *Shari'a* to inflict *Jizya* on them".[1]

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[1] Maududi, *Islamic Law and Constitution*, op. cit., p. 303.

The casual way in which Maududi regards *Jizya* would mean that in a modern Islamic State no one would be paying *Jizya*. The non-Muslims who come under the sway of Muslims, apart from those who are either contractees or conquered, would not be expected to pay it any-way. In fact all three categories, a, b, and c, if they so desired, could opt out of it at any time after the initial phase. They could either offer themselves for fighting or undertake to pay the normal *Zakat*. In spite of his unconcern about levying *Jizya*, Maududi is at pains to show the leniency which is implicit in the *Shari'a* in respect of receiving *Jizya* and *Kharaj* from the non-Muslims. He says that the *Shari'a* prohibits any chastising or use of coercion in connection with the collection of *Jizya*. He also states that under no circumstances can a non-Muslim's movable properties be auctioned in procurement of these taxes. The poor, or those people who have no apparent livelihood, have to be excused from payment; moreover the state treasury has to give them stipends and grants. In a modern Islamic State then, the administrative machinery would be brought to a standstill if no legal case could be brought against citizens for failing to pay taxes. This also supports the argument that the conception of *Jizya* as held by Maududi is far from practicable.

(ii) Political Rights and Privileges

The matters which are discussed by Maududi under the heading of political rights are not really rights but more in the nature of curbs which Islam puts on them. The first and most important is that Maududi gives them the 'inalienable' right of electing representatives, but separates their electoral system from that of the Muslims. Repeating, as he so often seems to do, the argument that the Islamic State is an ideological State and 'therefore it cannot indulge in any deceptive measures",[1] he asserts that the head of the State must be some one who believes in that ideology and therefore has to

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[1] Maududi, "Islami Riyasat main Dhimmiyon kay Huquq", *Tarjuman-ul-Qur'an*, (Lahore. October 1961). Vol. 57, No. 1, p. 53.

be a Muslim. The head of the State is to be aided by a *Majlis-i-Shura* (the Council) in conducting the affairs of the State. Because of the nature of this Majlis, its membership must be exclusively Muslim. After saying this much, be seems to change his whole position by suggesting that "in regard to a parliament or a legislation in the modern conception......this rule could be relaxed to allow non-Muslims to become its members, provided that it has been fully ensured in the Constitution that:

a) it will be ultra vires of the parliament or the legislature to enact any law which is repugnant to the *Qur'an* and the *Sunna;*

b) the *Qur'an* and the *Sunna* will be chief sources of the public law of the land;

c) the Head of the State and the assenting authority would necessarily be a Muslim".[1]

He suggests as an alternative that the non-Muslim Communities should be able to elect their respective representatives to look after their own interests. These specially elected representatives would form a body, a parliament quite separate from the parliament to which the general Muslim population elect their representatives. This second parliament, thus elected, will be confined to non-Muslims. Through this assembly they will have the right to propose laws in connection with their Personal Law. All such laws will be placed on the Statute Book after receiving the assent of the Amir. They may also submit suggestions or objections to the Parliament on matters of administration which affect the whole country. Moreover they will be able to raise questions in the Parliament regarding matters relating to their specific groups as well as problems affecting the State. A representative or representatives of the State will be appointed to this body to provide answers to such questions.

Nor is this all. Maududi further recommends that there should be a third Parliament, exclusively for women.

Now to have three parliaments in a state, the *Majlis-i-Shura*, the Women's and the Minorities' Parliaments, may be practicable. But since it is for the latter two to make suggestions, sometimes to the Amir and sometimes to the *Majlis-i-*

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[1] ibid. p. 316.

Shura, about their own interests and the interests of the whole State; and since both are allowed to make criticisms of administration as well as positive proposals, such a system is bound to become extremely cumbersome and complicated if not impracticable.

Maududi's attitude is very intimately tied up with the contemporary history of constitution-making in Pakistan and also with the problems of the electorate which resulted in the creation of Pakistan. Pakistan was created by the Muslim leadership's assumption that the Muslim minority would not have adequate representation in a Hindu Majority India. The constitutional safeguard on which the whole political fight was based arose, in fact, from the problem of separate electorates for the Muslim minority. Pakistan was created, but then the problem was that it was not in any way purely a Muslim country. Hindu, Christian and other minorities existed within its boundaries. According to the 1951 census, the breakdown of the population was as follows:

Pakistan's total population	75,636,000	
Muslims	64,959,000	85.9%
Caste Hindus	4,349,000	5.7%
Scheduled Castes (Lower caste Hindus)	5,421,000	7.2%
Christians	541,000	0.7%
Others	366,000	0.5%[1]

When the matters regarding representation came before the Constituent Assembly, the East Pakistani Minorities opted for a joint electorate, meaning that they would like the Constituent Assembly to prescribe a method of election in which a condidate from the Minorities could stand for any general seat. The Minorities from West Pakistan stressed that Minorities should have their own constituencies from which they would elect their own representatives to membership of the National Assembly. The reason for this was that the Caste Hindus, who owned a predominant part of the business interests in East Pakistan, were of the opinion that, because of their influence, they would be able to elect a higher number

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[1] *The Census of Pakistan Report 1951.* table 6-2:
These figures are taken from 1951 Census to show approximately how the breakdown of population in terms of religions stood at the time of Partition in 1947. There was no Census in 1941.

of representatives if they were to contest the general seats than they would procure by percentage. Moreover, they thought that they would be able to get the votes of the lower caste Hindus because of their influence. Mr. Fazluddin had argued that, under a system of separate electorates, seats should be allocated to the lower caste Hindus, because their interests are different from those of the higher castes.[1] This controversy occupied over three months of the Constituent Assembly's time without a decision, and finally it was left to the respective provinces to decide upon the mode of representation. It was during this controversy that Maulana Maududi had come out with an article outlining his plan for a separate Assembly for the Minorities, and his point of view was endorsed by the Christian community. Mr. Fazluddin included this article on separate electorates as an appendix to his book *Separate Electorates—the Life Blood of Pakistan.*[2]

(iii) Government Service:

With the exception of the Key-posts, Maududi intends to leave all other services open to the non-Muslims "without prejudice". But it becomes clear that there are some government jobs which would not be open to the non-Muslims. He does not, however, define exactly what sort of positions would be barred to non-Muslims. He suggests that a body of experts could be appointed to set down and define those key-posts where the policy and security of the country are involved, and then these posts would be barred to non-Muslims. He justifies his point of view by saying that in every 'Ideological State' (by which he means, perhaps, the existing Communist States) such positions are given only to those persons who have the fullest faith in its ideology and who are capable of running it according to the spirit of the ideology.[3] Position which do not directly deal with policy-making, such as Accountant General, Chief Engineer, or Post Master General, etc., would be open to the *ahl-al-Dhimma.*

Although he had earlier said explicitly that *ahl-al-Dhimma* would pay the tax only for their protection and could opt out of payment by fighting for Islam, he prohibits active army service to members of the Minorities. Only those posts will be available to them which are not connected with the conduct of war—by which he probably means clerical work or other civilian employment in the army. It is clear that even here he would bar such offices where a non-Muslim might have access to military or other vital secret information. This seems contrary to the Islamic practice. Exemption from military services were granted only to non-Muslims who wished to be excused, and these were asked to pay *Jizya*. Bani Taghlib (a non-Muslim tribe) had been allowed to fight in the Battle of Buwaib (13 A.H.) because they expressed the wish to do so.

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[2] Joshua Fazluddin, *Separate Electorates---The Life Blood of Pakistan* Lahore, 1956, p. 12.

[2] ibid. p. 51.

[3] Maududi, *Islami Riyasat*, op. cit. p. 366.

(iv) Education and Proselytism

Non-Muslims will have a full right to education and also the right to give religious education to their children. The State will be obliged to provide religious teachers for them in State schools if the parents of non-Muslim children so desire. However, the schools run by non-Muslim organizations will have to confine instruction in their own religions to their own children; and when Muslim students attend such an institution, the authorities will be obliged to provide religious teachers for them.

The non-Muslims of one religion will have the right to propagate their religion among other non-Muslim communities, but no right to convert a Muslim to their religions will be given. In fact Maududi suggests that this should be a crime punishable by law.

(v) Ahl-al-Dhimma and the Law

The penal laws are the same for Muslims as they are for the *ahl-al-Dhimma,* and Maududi holds that Islam provides the same penalties for all communities. He says; "......whether it is a *Dhimmi* who steals or a Muslim, the hands of the thief will be chopped off".[1] Probably it will not be out of place to mention here that the attitude of Maududi towards punishment is entirely retributive. At no time in his writing does he admit a place for reformatory punishment. The Civil Laws are also equally and similarly applicable. The only places where non-Muslims are above the law are in eating pork and consuming wine. Interest and usury, which would affect the whole economic bases of the Islamic State,

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[1] Maududi, *Islami Riyasat,* op. cit. 334.

Maududi believes, should be prohibited to them along with Muslims.

The guarantee which the *ahl-al-Dhimma* have is inviolable and the compact with them will not be broken in the case of a few non-Muslims breaking it. The crime of an individual will in no way justify chastising a whole community of non-Muslims, and only the involved or guilty person or persons will be punished, and then according to law.

In matters involving the personal law of the non-Muslim communities, their own personal law will be applied. For example, marriages without the fixation of *Mehr* (Dower Money) or marriage within the *iddat*[1] would be legal for non-Muslims if their personal law so provides.

Apart from these rights, Maududi lists a number of other general rights, like freedom of expression, movement, etc. As long as they do not subvert the Ideology on which the Islamic State is based, they are to be respected.

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[1] *Iddat* refers to the period within which a woman may not make a second or subsequent marriage. If she is divorced, or if her husband has died and she is not pregnant, the period stipulated is four months. If she is pregnant, it is until her child is born.

CHAPTER IX

POSITION OF WOMEN IN THE ISLAMIC STATE

One is always apt to underestimate the importance of the position of women in an Islamic State. The truth, however, is that some of the most noted writers on Islamic politics have stressed the importance of women's role in an Islamic State, particularly the importance of their moral influence. Maududi goes as far as to assert that the decline of the major civilizations in the world, including those that were Muslim, was due to moral degradation. Women became the target of lust and orgies, and the civilization consequently fell.

The first important treatise[1] on the position of women in Islam in the modern world came from the Egyptian Qasim Amin, a disciple of Muhammad Abduh. Kurdish by birth and French by education, Qasim Amin expressed the opinion that one of the primary causes of the stagnation of Islam as a political and social power lay in the disappearance of social virtues and the weakening of moral strength. He asserts also that the cause of this is nothing other than ignorance of the true sciences and the *Shari'a;* it is from these that the laws of human happiness can be derived.

This ignorance, he believes, begins in the family. The relationships of mother and child, man and woman, are the basis of society; the virtues which exist in the family will automatically be transferred to the *Qaum:* "The work of women in society is to form the morals of the nation". He also says that woman in the Muslim countries does not have the necessary status if she wants to play the role attributed to her, and he claims that this is not due to the weaknesses of *Shari'a,* because *Shari'a* was the first systematic law which provided for the equality of women with their male counterparts. Islamic provisions became vulgarized and corrupted through the converts, who in spite of accepting Islam, brought with them their own customs and illusions. They destroyed the true Islamic system of government, which defines the rights and duties of the rulers and the ruled, and put in its place the principles of despotism. Taking advantage of this, the strong began to despise the weak and later the women.[1]

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[1] Qasim Amin. *Tehrir al Mar'a*. This statement of the ideas of Qasim Amin are based on Albert Hourani, *Arabic Thought in the Liberal Age* (Oxford U.P., 1962) pp. 164-170.

In any society, the heart of all social problems depends upon the status of women, and this can be improved only by education. Amin, however, does not suggest that women should be as fully educated as men. He suggests that they should have elementary education, if they are to manage their households smoothly and to play their proper role in the betterment of society. Apart from religious instruction, he suggests, they should be taught to read and write, and be given some notion of natural and moral sciences, history and geography, hygiene and physiology, and physical training.

It is also advisable, he says, to give them such an education as to prepare them for earning their own living. This, he says, is the only guarantee of women's rights. Qasim says that unless a woman is able to support herself she will always remain at the mercy of man, notwithstanding the rights that the law provides. This would, he believes, end tyranny and also the seclusion and veiling of women. After saying so much he becomes very cautious, stating that it is not his desire to end seclusion altogether because to safeguard virtue a certain degree of segregation is necessary. He goes on to say that his purpose is to restore what the *Shari'a* lays down. There is, he maintains, no strict provision about women not revealing their faces, and, like many modernists, he considers the controversial seclusion of "*parda* verse" of the *Qur'an* as pertinent only to the wives of Muhammad.[2] Here he is in agreement with the ideas of his Indian contemporary Ameer Ali.[3]

Amin also deplores polygamy. He says that contempt for woman underlies polygamy, and that no woman could willingly share her husband with another. If a man marries a second time it can only result in ignoring the wishes of the first. He asserts that in some circumstances it is lawful, for example when the first wife is insane or childless. But in these cases man should be chivalrous and forbearing. It can-

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[1] *Tehrir* pp. 116-131 quoted from Albert Hourani. Op. cit. p. 165.

[2] This verse is quoted in full later in this chapter.

[3] Syed Ameer Ali *History of Saracens.* (Christopher, London. 1955), p. 175.

not be denied that revealed law permits polygamy, but equally it cannot be denied that it also warns against its dangers: "Marry such women as seem good to you, two, three, four; but if you fear you will not be equitable, then only one". Divorce too is permissible in special circumstances but is reprehensible in itself. It is best to refrain from it where possible. Amin says that if divorce is to be practised, women should also have the right to divorce.

In all the matters he deals with, Amin proceeds by defining the Islamic principles rather than abandoning them. He asserts that if we have to understand the political and social rights of women we should understand the *Qur'an* and the *Shari'a* and interpret them in 'the right way', and he believes that he is doing so. But comparing him with the orthodox interpretation, one sees at once how modern western thought and scientific knowledge have influenced him.

Opposed to this modern liberal attitude to women and their position in society is the fundamentalist attitude of Maududi. Although Maududi follows Qasim Amin in chronology, he does not allow any place to modern Western or liberal thought, and draws purely on the *Qur'an* and the *Sunna,* so much so that in certain places he even disallows certain quite elementary things like compulsory registration of marriages.[1] He thinks that the witnesses in the marriage would all be there to vouch for any party in case of dispute, and asserts that *Shari'a's* direction for conducting a marriage is ample. He also opposes the appointment of Registrars of Marriage to conduct the *Nikah* on the grounds that Islam does not allow for a professional clergy.[2]

Maulana Maududi's attitude towards the position of women in an Islamic State can be gathered mainly from *Parda* (1963), his Answer to the "Marriage Commission Questionnaire", 1958, and also from the reactions of the *Jama'at-i-Islami* to the Marriage Commission Report included in the book *Marriage Commission Report X-rayed* (1959). Although the second deals mainly with the specific legal problems arising from the position of women in Pakistan, *Parda* is a comprehensive work on the position of women in an Islamic State. It begins with the history of world civilizations as a puritan like Maududi would see it, attributing the fall of each civilization to women. He says that we see two extremes of woman's position in the world: "On the one hand she is cheapened to the position of a maid and a mistress, she is bought and sold and all the rights of inheritance are taken away from her. She is considered an embodiment of vice and impropriety......On the other hand she is priced highly but in such a way as to make her a symbol of moral degradation, making her a toy in the hands of those with animalistic desires. In fact she has then been made an agent of Satan and with her elevation is synchronised the decline of humanity".[1] He assures us that the Islamic State would preserve civilization by protecting women from both these extremes. Reading through his work *Parda,* one is constantly reminded of the importance he gives to the position of woman in an Islamic state. He asserts time and time again that if an Islamic state is to be established and preserved, the position prescribed for woman in the *Shari'a* must be adhered to, otherwise there is a danger of the whole edifice crumbling under the so-called integration of women with men. Unless women play their role—which appears, from his writing, to be little more than negative—it is not possible to achieve the desired end. Woman should not mix with man socially lest he should be lured by her away from things which are vital. As soon as the idea of sex outside marriage enters man's head, society, state, ideals and indeed Islam would collapse in the same manner as the Greek, Roman, Christian and modern European civilizations have done.[2]

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[1] Maududi's answer to the Marriage Commission Questionnaire. Quoted from "*Marriage Commission X-rayed*" ed. Khurshid Ahmad (Charagh-i-Rahpub, Karachi, December 1959), p. 5.

[2] Ibid. pp. 5-6.

Let us now take a fuller example from Maududi's version of the causes of the decline and fall of these civilizations, considering his treatment of one of them, namely the Greek. He says that among the ancient civilizations that of Greece appears to be the most glorious. In its early stages, the position of women was degraded morally, legally and socially. Greek mythology, for instance, attributed the troubles of man, to a woman, Pandora. Education, however, gradually effected a change in attitudes in Greek society and woman's position

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[1] Maududi, *Pardah* (Islamic Publications Ltd., Lahore, 1963.), pp.7-8.

[2] Ibid. pp. 7-29.

was raised. This change, however, did not have any effect on the legal status of woman, but she began to be placed on a very high social pedestal. She became the uncrowned queen of the Greek home. Her sphere of influence was restricted to the home, but within these limits she had unquestioned supremacy. Her honour was a valuable thing, she was respected and esteemed. Among the better classes of the Greeks, *Parda* (seclusion of women) was observed in the sense that the men's quarters in principle were separated from those of the women. Their women did not participate in mixed meetings, nor were they exhibited in public. For a woman the highest rung of goodness was achieved through entering into matrimony, and to live a prostitutional life was like going into the deepest dungeons of vice and degradation. This was the nature of Greek society during the time of its glorious dominance. In this era there did exist some weaknesses of character but they were limited and within bounds. However, as time went on the Greeks let themselves be captured by sloth and lust, and the prostitutional class began to dominate the social scene of Greek life. The brothel became the most frequented place for all classes of men. It became the centre of attraction for the philosopher, the poet, the historian and the artist.[1] This, Maududi says, ultimately caused the downfall of the glory that was Greece.[2] He says that similar developments may be found to be responsible for the fall of Rome.[3]

This passage describes very well how a puritanical mind looks at civilization. The Maulana in no way admits that the absence of moral virtues could have been a symptom rather than a cause of decline.

The word "character" is used throughout the work in relation to sex alone. In spite of the fact that the Maulana constantly assures us that woman is a creature of God, his work is replete with the idea that she is a constant danger to man and hence to the Islamic State. This is because of her alluring nature. The interpretations that he gives to the *Shari'a* are directed in the main towards restraining her. "Man should be vigilant lest he should like Adam himself be lured into a life of pleasure". And this he says in spite of having rejected the "Zionist mythology"[1] a few pages earlier.

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[1] Maududi, *Parda*, Op. cit., pp. 10-11.

[2] Ibid. pp. 13-14.

[3] Ibid. pp. 14-17.

More than half of *Parda* deals with a study of the modern Western attitudes towards sex. He criticises these attitudes, quoting freely from Western writers who seemed either to agree with him or to be critical of the morality in the West. He concludes by saying that if we are to progress towards the establishment of a God-fearing society it is vital that women should be segregated and that there should be no mixing of sexes and no sex relations outside marriage.

He puts forward the thesis that *Shari'a* had laid down the domains of both man and woman in society. Woman is to live inside the home and look after the affairs of the house; man is to serve as a bread-winner. God's will is that, for the sake of harmony in society, each sex should perform its own set task. He bases this view on a very innocent verse of the *Qur'an:* "And I created everything in pairs".[2] He says that this verse points towards the universality of sex law,[3] and he continues by saying: "The reality of the principle of pairing is that one part of the pair should be dominant while the other is recessive; one should have assertiveness while the other has acceptance, modesty and humility. If one has the quality of forcefulness the other should have the quality of reception; if one has positivity the other should have docility. This relationship of positivity and docility, assertion and acceptance, dominance and recessivity is in fact the principle of creation".[4] He goes on to express the belief that if this principle of pairing is abused or disturbed, there is a danger that the human civilization would fall apart in the same way as civilizations before us have done. Each being, male and female, has to recognise its place in society: "......there is neither degradation in the docility of the docile nor is there any case for pride in the supremacy of the dominant.[5] "We have all come to perform our respective tasks in the world

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[1] He says that Zionist mythology ascribed to a woman, Eve, the responsibility of bringing sin into the world. This left an indelible mark not only on the Jewish but Christian mind. *Parda.* op. cit. p. 14.

[2] *Qura'n* 51 : 3.

[3] The term 'sex laws' is used by him in English. *Parda* op. cit. pp. 233-234,

[4] *Parda.* op. cit. p. 234.

[5] Ibid. p. 236.

because the Creater wishes His universal machinery to go on working. Our job is to perform our own specialised work".[1]

With this in mind, Maududi goes on to describe three principles which, he says, govern the relationship of man with woman in society. The first is that God's will can be none other than to see that every organ of society works smoothly and without hindrance.[2] The second is that the 'dominant' and 'recessive' parts of the system are both of vital importance for the smooth running of the social order. Yet there is no glory in the dominant part being dominant nor is there shame in the recessive part being docile in realizing its desired position in society.[3] Thirdly, God's wish being known, it follows that man, being the dominant part, is the guardian of the family's virtues and the affairs outside the home, and that woman is the mistress of the home and her task is to see to the administration of the home. Here Maududi quotes from the Hadith. "*Woman* is the master of her husband's home, for her actions in her domain she will be responsible to God".[4]

As has been mentioned earlier in this chapter, the '*Parda* verse' of the Qur'an is a very controversial one. Before a discussion can be undertaken, the verse should be quoted in full.

> "Oh, Wives of the Prophet, you are not like other women, if you are virtuous do not talk in low voice lest a man whose heart is not clean should set hopes upon you, whatever you say, say it simply and straightforwardly, and stay in your houses and do not indulge in make-up like the women of the *Jahaliya,* perform your prayers, give *zakat,* and obey God and his Prophet. God wishes to preserve you from evil".[5]

Qasim Amin and Ameer 'Ali were of the opinion that this verse is applicable only to the wives of the Prophet and that the rest of the *Umma* is not involved because of the very fact that it is addressed to the wives of Muhammad. Maududi, on the other hand, contends that because a comparison is made with the women of *Jahaliya* it becomes applicable to all Muslim women.[1]

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[1] Maududi, *Purda* op.cit. p. 235

[2] Ibid. p. 235.

[3] Ibid. pp. 235-236.

[4] Sahih of Bokhari. Chapter: "Qawa anfusikum-wa-ahlikum Narun."

[5] *Qur'an.* 33 : 4.

It is however of some significance that the Maulana realizes that in some circumstances it may be unavoidable for women to leave the four walls of the house. In cases of poverty or illness or the incapacity of the guardian of the family, woman will probably have to go out in search of work. "In this respect", he says, "the *Shari'a* is not very strict".[2] And to justify this statement he falls on *Hadith*.

> "And God has given you permission that you may go out of your houses to fulfil your needs".[3]

Could a woman going out to work to supplement her husband's meagre income be classified as "......going out to fulfil 'needs'? If so, the idea that they should remain within the four walls of the house, which Maududi puts forward in favour of the segregation of women, would fall into jeopardy.

Rights of Women

In an Islamic State woman will have a specialized task to perform, and therefore her political and social position would be different from that of man. Legally speaking, therefore, there would be three kinds of citizens in an Islamic State: the male Muslims, the minorities or the non-Muslims, and the Muslim female population. Each of these groups will have its own rights and obligations in the society.

According to Maududi, a Muslim woman has the right to marry any adult of her choice except a slave or a non-Muslim. But because she has to obey the guardian of the family before marriage,[4] her choice of a husband would not be effective if the guardian did not approve. However her refusal of one suggested by the guardian would be effective because she cannot be compelled to marry against her will. But there are limitations to her freedom even in this respect because, as the Maulana stresses, for woman to take "cognizance of the opinions of father, grandfather, brother and certain friends is necessary".[5]

He says that certain rights have been fixed so that the

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[1] *Parda*, pp. 261-264.
[2] *Parda*, pp. 261.
[3] *Sahih of Bokhari*. Chapter "Hajat-ul-Insan."
[4] *Parda*, p. 267.
[5] Ibid. p. 266.

man does not take undue advantage of his dominant position.

Islam gives very detailed provisions in matters of inheritance. A woman can claim half the share of a brother from a deceased father. This is because she has other advantages like *Mehr*, and her financial responsibilities are also smaller compared with man's.[1] She can hold this property in her own name and manage it if she wishes.

Woman has the full right, the Maulana says, to educate herself in both religious and social spheres.[2] But in another place, like Qasim Amin he suggests that women should not be subjected to the same rigorous education as man and that they should have only such education as would prepare them for the task which God has fixed for them in society.

He then goes on to compare the position of women in Islam with the ancient societies in which the families used to kill female children at birth because they considered them to be a curse, and with the Western civilization which has given them so much freedom that the society is in danger.

When woman has been confined to the matters of the home, political rights become irrelevant, but the Maulana even takes account of those and gives them a right to vote which he says should be qualified, "at least at present, by a certain standard of education", and then goes on to say: "experience has shown that adult franchise for women under the prevailing conditions (in Pakistan) has proved unsuitable for them and harmful for the welfare of the country".[1] But he does not give women the right to be elected to the legislature, and adds that this is contrary to the whole spirit of Islam, and "nothing more than an imitation of the West".[4] "According to Islam", he continues, "active politics and administration are not a field of activity of the women folk. It falls under man's sphere of activity".[5] In this, however, Maududi is willing to make compromises as became clear from his support of Miss Fatima Jinnah for the presidency of Pakistan. He suggests a separate Assembly elected by women voters and confined to women members. The main function of this Assembly should be to look after the special affairs of women such as female education, female hospitals, etc. And this Assembly should be consulted by the country's legislature on matters of importance affecting women as a whole. Yet would not this Assembly of women bring them into active politics, the very thing from which the Maulana wants them to stay away?

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[1] *Parda*. op. cit. footnote pp. 269-270.
[2] Ibid. p. 272.
[3] *Maududi*, "Some Constitutional Proposals submitted to the Constituent Assembly of Pakistan, August 1952." Quoted from *The Islamic Law and Constitution* (Lahore, (1966) p. 345.
[4] Ibid. p. 349.
[5] Ibid. p. 349.

Maulana Maududi's whole attitude towards women is very conservative. The fact that he proposes, along with an Assembly for minorities, another one for women, shows that he considers them to be a completely different type of citizens. The question arises whether they would be allowed to legislate or whether their purpose would be solely administrative, as he intends in the examples of administering hospitals for women, etc. In fact he does not carry the argument through and leaves wide gaps.

CHAPTER TEN

CONCLUSIONS

The development of Maududi's political ideas can be understood by his attitude towards nationalism. In his writings of pre-partition days he opposed the Muslim League's view of nationalism and supported the concept of world wide Muslim community which was clearly seen in the early writings of Maulana Azad. He said, "The ultimate goal of Islam is a world state in which the chains of racial and national prejudices would be dismantled and all mankind incorporated in a cultural and political system with equal rights and equal opportunities for all, and in which hostile competition would give way to friendly co-operation between people so that they might mutually assist and contribute to the material and moral good of one another" He envisaged such a world state for Islam and seems to oppose the creation of Pakistan mainly because the Muslim League was supporting a national state for the Muslims of India and was not striving for the higher cause which he had in mind, namely the cause of what he called the 'Islamic Revolution' which would embrace the whole Muslim world.

At the same time he was also rejecting the stand of the Indian National Congress which was at the time striving for the establishment of a secular state for India. In his three volume study *Musalman aur Maujuda Siyasi Kashmakash* (Muslims and the Present Political Struggle) Maududi delineated his political creed. In the first two volumes, his criticism is directed towards territorial nationalism and the Indian National Congress. He insisted that if the Indian Muslims accepted this brand of nationalism they would for ever lose their separate cultural identity and the cause of establishing a world wide *Umma* would be jeopardised.

His second interpretation of Nationalism begins at the creation of Pakistan. This happened when he accepted Pakistan as an historical truth, when a state called Pakistan was firmly established on basis of nationalism. It is after he did so that his endeavour to create within the political boundaries a state based on Islam became meaningful and he did not wait very long to make this readjustment. Now he began to talk about the Islamic State, the Sovereignty of God, the process of constitution-making and legislation, and other related matters which were deeply related with accepting the position as a modern nation. Thus he abandoned his theory of 'Islamic Revolution' or at least set it aside until such time as the house can be put in order. The ultra territorial concept of *Khilafa* and the *Umma* were also set aside and his attention was more and more diverted towards influencing the Constitution-making in Pakistan.

Before the creation of Pakistan his ideas were mainly normative and directed towards the re-establishment of the undefinable lost glory of Islam, while after the creation of Pakistan we see in him the emergence of the pragmatist a practical thinker employed deeply in the day to day politics of his country striving to bring about the establishment of the Islamic State which he envisaged.

In 1947 Maududi had said, "Although the Muslims in Pakistan were emotionally in favour of creating an Islamic State, they lacked a clear understanding of the problems involved". This clear understanding Maududi set out to provide.

Maududi's political ideas have been deeply influenced by such men as Ibn Khaldun, Shah Waliullah, Abul Kalam Azad, Dr. Muhammad Iqbal, Hassan al Banna and the views of Jami'at-ul-'Ulama-i-Hind and concepts such as modern Nationalism. Of these and others, he is a strange mixture.

He is a follower of Ibn Khaldun in the sense that *Mulk* (domination over a territory) is feasible and exists in spite of *Khilafa* which symbolises the religious unity of the Islamic community. From Shah Waliullah of Delhi he takes the historical perspective and interpretation in making a distinction between the 'Islamic History' and the 'Muslim History', disowning what he abhors of Muslim rulers and institutions and considering what he appreciates of the same. From Shah Waliullah he also inherits the idea that no one school of *fiqh* is applicable in our own time and that we have to work out a scheme of interpretation to bring the *Shari'a* up to date taking into consideration the existing historical environment and situation. From Maulana Azad's early writings he developed his theory of the 'Islamic Revolution' and Maulana Azad also provided the theoretical basis on which the Jama'at-i-Islami came to be based. The Jama'at by its nature, purposes and methods can be traced to the concept of *Hizbullah*, which Azad envisaged. From the Ikhwan-ul-Muslimun, Maududi learnt the aggressive militant methods which he employed in the day to day working of the Jama'at-i-Islami. His strife for attainment of political power by constitutional means for establishment of the Islamic State also springs from the *Ikhwan*.

Finally, at the creation of Pakistan, he had to submit to the forces of modern nationalism and to make theoretical compromises to initiate his strife in favour of making Pakistan an Islamic State. The phrases such as Islamic State, Sovereignty, Amir, Legislation, imply that there is a state different from other states and from other Islamic States and thus his compromise with modern nationalism becomes clear and evident.

More than a quarter of a century before the creation of Pakistan, Iqbal had talked about the eternal and the mobile in Islam. He had said that the *Qur'an* provides the eternal, and the institution of *ijtihad* for the mobile in Islam. He had said "The *Qur'an* provides for what is eternal but the principle of movement in the structure of Islam is provided by *ijtihad*".[1] If this principle had not been provided, Iqbal believed Islam would have become stagnant and the mobility and ability of Islam to adjust to changing circumstances would have disappeared. This principle has found its way into the system which Maududi develops; but Maududi's conservatism and fundamentalism tend to take the spirit of mobility out of Islam. In other words, while he is liberal in the sense that he does not accept any of the existing schools of *fiqh* to be wholly applicable in our circumstances and allows the *Umma* to work out a system of law most applicable to its own situation when he comes down to reinterpretation, or what we may call legislation in our own context, his conservatism allows us very little freedom of action in detail. In other words, while he is liberal in drawing up broad principles when he comes down to matters such as the position of non-Muslims in an Islamic State or the position of women in an Islamic State, his conservatism does not allow him to make liberal departures from the traditional stand-points.

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[1] Muhammad Iqbal, *Reconstruction of Religious Thought in Islam*, op. cit. p. 209.

Rosenthal has suggested that Maududi's plan for an Islamic State is "......sustained by great traditional learning".[1] This may be true but it must be understood that his active engagement in day to day politics of his country tends to make his work fragmentary. Even his most important work, *Islami Riyasat*, a selection from which has appeared in English translation under the title *Islamic Law and Constitution*, is a work not undertaken as a whole but a collection of articles and speeches spread over a number of years reflecting the exigencies of time and political issues at hand. He is a topical commentator and that is why one finds him inconsistent in detail and not comprehensively systematic. Contradictions are not restricted to his writings. His active involvement in politics in the capacity of the Amir of the Jama'at-i-Islami has sometimes pressed him into compromises which are diametrically opposed to his own ideology. One such occasion was when he, in spite of his insistence that a woman could not rule the Muslim people and that Islam requires women to restrict their activities to the domain of the home, supported Miss Fatima Jinnah's candidacy for the presidentship of Pakistan against Ayub Khan.

Although he is convinced from the outset about the superiority of the Islamic institutions, culture, law, economic system and moral bases, he tends, in his writings, to prove this by making comparisons between Islam and the West. However, he tends to prove the superiority of Islam by comparing it with Western practices not realizing, it seems, that comparison of ideology with practice is always fallacious. Moreover, he always tends to give the impression of first working out his theory and then looking for proofs and illustrations to support it. In criticising the Western institutions he always seems to accept the criticism of the Western critics if and when these criticisms suit his ideas. For instance, his criticism of the capitalist economic system is broadly based on the communist arguments and that of the communist system on the criticism of the Western critics.

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[1] E.I.J. Rosenthal, *Islam in Modern National State*, op. cit. p. 137.

In spite of his extreme conservatism and faulty methods, Maududi has been able, mainly through his writings, to gain some supporters among the intellectuals, lawyers and men in the universities. But his main support comes from among the lower middle classes. In spite of faults in his methods, Maududi is a persuasive writer and it is to this that he owes most of his success. Coupled with his ability to organize a party such as the Jama'at-i-Islami on authoritarian lines, he has been able to broaden his sphere of influence considerably. However, the flow of aid in capital and technological assistance from the West when coupled with the development of indigenous resources and the expansion of education facilities could adversely affect his influence as a conservative interpreter of Islam. Firstly because a considerable section of lower middle classes on whose support the *Jama'at* thrives, may move into the cadre of professional middle classes over whom he does not appear to have much influence and secondly technological development is also liable to broaden the influences of more liberal outlook. In this case the more liberal ideas of Iqbal on *Shari'a* and *ijtihad* have a greater likelihood of being acceptable.

Muslim thinkers of the past have always been predominantly concerned wih bringing theory in line with history. Mawardi seeing that the power was passing into the hands of *Shi'a* Buwaihid Amirs asserted once more the authority of the Abbasid *Khalifas*. Ghazali becoming conscious of the fact that power had actually passed on to the Amirs, introduced in theory the concept that the delegation of powers to 'Ulama, Wazirs and Amirs was not un-Islamic in character. Ibn Khaldun seeing that political power had passed to the chiefs in North Africa and unity of *Khilafa* could no longer be maintained introduced the theory that *Mulk* exists in spite of the *Khilafa* and that two or more *Khilafas* can exist at the same time. Maududi's contribution in this respect is not of a mean order. He is one of a series of Muslim thinkers whose contribution in this sphere is considerably important, although on account of his fundamentalism and conservatism he does not give as much ground as Zia Gukalp of Turkey who propagated for complete separation of religion and state, and Muhammad Asad who equates *ijtihad* with modern legislation.

These are the conditions which Maududi as a Pakistani and a Muslim thinker found and it is in the following manner that he began to make his compromises.

1. In Pakistan, as in many other Muslim countries, Western colonialism had come to an end and the Muslims in these countries were free, if they so wished to draw up their own programme of policy and law.

2. *Khilafa* as a unifying force among the *Umma* or even as a symbol had ceased to exist.

3. Because of certain political, economic and social reasons in our contemporary world it is neither feasible nor possible to have any kind of political authority over the whole Muslim world. Thus for an indefinite period various Muslim States will have to co-exist as separate political entities as National states based partly on Western concepts.

4. Each of these states is an *Umma* in itself and if each of these states strives on its own for an Islamic order, there is an inevitability of the birth of the macrocosm from these microcosms.

5. Democracy is the current practice and in a democratic state the common man elects his governors whether or not there was a social contract in history or logic.

Maududi meets these conditions in the following manner:

1. *Khilafa* as an institution symbolising authority has disappeared but in the existing order the emphasis should be put on the *Umma* as being the *Khalifa* (Vicegerent) of God and each state should elect an Amir in a democratic way in the manner that a democratic state elects a President. This is not un-Islamic.

2. Because the existing *Shari'a* no longer answers all the existing conditions *ijtihad* and *ijma* should come into play to bring law and *fiqh* up to date. Not all which is found in the books of *fiqh* is law, and none of the existing four schools of *fiqh* on its own is applicable in our conditions. To perform the task of bringing law up to date a selection should be made, by an appointed body, from existing schools and the new needs should be met with by *ijtihad* and *ijma'*.

3. The *Umma* is the *Mujtahid* and thus those learned and

pious among the *Umma* should be delegated the power by the *Umma*. The Amir should be most learned, the most wise and the most pious and should have the greatest authority.

APPENDICES

APPENDIX I
ORGANIZATIONAL STRUCTURE OF JAMA'AT-I-ISLAMI

1. The President of the Jama'at-i-Islami (Amir) is elected by a direct vote by the members of the party in secret balloting for five years. The president according to the constitution can be removed by a two third majority of the Central Executive Council.

2. The Central Executive Council *(Markazi Majlis-i-Shura)* has a membership of fifty. These members are elected for a period of three years by the members of the party. The *Majlis* formulates all policy and programme, interprets the constitution and works as an advisory body in matters concerning execution of political action.

3. There is a Working Committee of twelve members appointed by the Amir from among the members of the *Majlis*. Once a member ceases to be a member of the *Majlis* he loses his right to be on the Working Committee.

4. After every election of the *Majlis* a new Working Committee is formed to administer the party machinery.

5. A Secretary General is appointed by the President in consultation with the *Majlis* to head all the departments of the party to execute policy, and is in charge of the central executive offices in Lahore.

6. Some of the departments at the centres are:
   - Department of Organization
   - Department of Finance
   - Department of Workers Training
   - Department of Social Service
   - Department of Labour Welfare
   - Department dealing with matters of Students and their organizations.
   - Department of Adult Education
   - Departments of Translation (Arabic, English and Bengali)
   - Theological Institutions Department

Press Information and Public Relations
Department of Parliamentary Affairs.

7. There are eight Committees to deal with each of the departments. The Committees are as follows:

1. Economic Problems
2. Agrarian and Rural Problems
3. Political Problems
4. Educational Problems
5. International Affairs
6. Law and Legislation
7. Parliamentary Affairs
8. Labour Laws and Problems.

8. For the purpose of efficient administration the country had been divided into seventeen divisions. East Pakistan had four divisions and was under the *Amir* of the East Pakistan *Jama'at* having his Headquarters at Dacca. West Pakistan had thirteen administrative divisions. Each division had its Divisional *Amir* and a *Majlis* elected by the members residing in that division. The election is conducted every two years.

9. Each Division is divided into districts which are normally the same as the Government administrative districts. Each district has its *Majlis,* Secretary and *Amir* elected by its members for a period of one year.

10. There are two kinds of membership:

(a) *Muttafiqin* (Those who agree or Associate Members)

Associate Members are those who declare that they *Stand for the Islamic Order* but are not under the discipline of the *Jama'at* and it is not obligatory for them to support the *Jama'at* financially or otherwise. They do not have the right to vote. Five Associates form a group or a circle; on 30th September 1963 there were 1562 circles in the whole of Pakistan.

(b) Ordinary Membership is open to all, but a person has to serve a period as associate member before he is granted full membership. He must satisfy the *Jama'at* that he has fully grasped their aims and objects, methods of work policy and programme of the party before he is granted full membership. He not only has to show that he is in full agreement with the *Jama'at* but is living up to the requiremens of Islam. His public as well as private life is scrutinized. This scrutiny is carried on even after he has been granted membership.

11. In September 1963 there were over forty registered offices of the *Jama'at* in West Pakistan alone, and over twenty in East Pakistan.

12. Every Local *Jama'at* hold generally two meetings every week. One is for the members only when they meet to discuss their work for the previous week and by mutual consultation plan the work for the following week. At the other meeting the sympathisers, the general public and the associate members are all allowed to participate. In these meetings lectures are delivered on matters of general, political and religious importance along with readings from the *Qur'an,* the teachings of the Prophet and the literature of the *Jama'at-i-Islami* is distributed and discussed.

13. In bigger cities the pattern is somewhat changed in the sense that there the cities are divided into zones each holding its own meetings but being responsible to the city headquarters.

14. The workers and members make personal contacts with the general public to propagate their ideas; the monthly average of these contacts was over 12,000 in 1963.

15. The average circulation of the *Jama'at's* literature through libraries, sale and distribution by members is over 22,000 books a month. Up to 1967 over one and a half million books have been printed by the *Jama'at* and the Islamic Publications, the publishers connected with the *Jama'at-i-Islami.*

16. Maulana Maududi's writings have been published in seventeen languages including Urdu, Arabic, English, French, Indonesian, Bengali, Punjabi, Sindhi, Pushto, Hindi, Malayalam, Guuerati, Tamil, Telgu, Marathi, Kanarese and Japanese.

17. Some figures regarding the Social work of the *Jama'at* are given below:

1954-55, *Jama'at* provided medical aid through its dispensaries to 1,577,890 persons. Amount spent Rs. 260,236.00.

1955-56. Medical aid provided to 1,873,430 persons. Amount spent Rs. 303,325.00.

In 1958 there were 72 dispensaries and 7 mobile dispensaries providing free medical aid to people.

18. For each fiscal year the Secretary of Finance at the headquarters prepares the budget in consultation with the Finance Committee. The Budget is finally approved by the *Majlis*. The procedure adopted in making the budget is that all the estimated expenses are listed and in order to meet these expenses the amount is spread over all the divisions in proportion to the number of members residing in that division. Each division pays this amount to the centre according to a fixed monthly quota. Similarly the divisional *Jama'at* prepares its own budget keeping in view its requirements. The monthly quota required by the centre is added and in order to meet it further subdivided among the district branches and so on to the local *Jama'at*.

19. In time of National calamities such as floods, epidemics, earthquakes etc. special funds are raised.

The four main sources of income are:

1. Contribution by members and Associates
2. *Zakat* and *Ushr*. The members and some of the sympathisers pay these religious taxes to the *Jama'at*.
3. Publications and the income from them.
4. Money from the sale of hides offered to the *Jama'at* at *'Id-al-Adha*, from animals sacrificed. The *Jama'at* sources say that this is spent on social work of one kind or another.

APPENDIX II

CONSTITUTIONAL PLAN BY THE 'ULAMA

A Convention of the *'Ulama* of Pakistan met at Karachi on 21st to 24th January 1951 to formulate the fundamental principles of the Islamic Constitution.

In this convention both *Shi'a* and *Sunni 'Ulama* took part. The agreed principles were as follows:

"The constitution of an Islamic State should comprehend the following principles:

1. Ultimate sovereignty over the whole Nature and all law is vested in Allah, the Lord of the universe, alone.

2. The law of the land shall be based on the *Qur'an* and the *Sunna*, and no law shall be enacted nor any administrative order issued, in contravention of the *Qur'an* and the *Sunna*.

Explanatory Note:

If there be any laws in force in the country which are in conflict with the *Qur'an* or the *Sunna*, it would be necessary to lay down (in the constitution) that such laws shall be gradually, within a specified period, repealed or amended in conformity with the Islamic Law.

3. The State shall be based not on geographical, racial, linguistic or any other materialistic concepts, but on the principles and ideals of Islamic ideology.

4. It shall be incumbent on the state to uphold and establish the right *(Ma'ruf)* and to suppress and eradicate the wrong *(Munkar)* as presented in the *Qur'an* and the *Sunna*, to take all necessary measures for the revival and advancements of the cultural pattern of Islam, and to make provision for the Islamic education in accordance with the requirements of the various recognised schools of Islamic thought.

5. It shall be incumbent upon the state to strengthen the bonds of unity and brotherhood among the Muslims of the world and to inhibit the growth of all prejudicial tendencies

based on distinctions of race or language or territory or any other materialistic consideration and to preserve and strengthen the unity of the *Millat-i-Islamiya.*

6. It shall be the responsibility of the Government to guarantee the basic necessities of life, i.e., food, clothing, housing, medical relief and education of all citizens without distinction of race or religion, who might temporarily or permanently be incapable of earning their livelihood due to unemployment, sickness or other reasons.

Citizens' Rights

7. The citizens shall be entitled to all the rights conferred upon them by the Islamic Law, i.e., they shall be assured, within the limits of the Law, of full security of life, property and honour, freedom of religion and belief, freedom of worship, freedom of person, freedom of expression, freedom of movement, freedom of association, freedom of occupation, equality of opportunity and the right to benefit from public services.

8. No citizen shall, at any time be deprived of these rights, except under the law; and none shall be awarded any punishment on any charge without being given full opportunity of defence and without the decision of a court of law.

9. The recognised Muslim Schools of thought shall have within the limits of the law, complete religious freedom. They shall have the right to impart religious instructions to their adherents and the freedom to propagate their views. Matters coming under the purview of Personal Law shall be administered in accordance with their respective codes of jurisprudence *(fiqh),* and it will be desirable to make provisions for the administration of such matters by judges *(Qadis)* belonging to their respective schools of thought.

10. The non-Muslim citizens of the state shall have, within the limits of the law, complete freedom of religion and worship, mode of life, culture and religious education. They shall be entitled to have all their matters concerning Personal Law administered in accordance with their own religious code, usages and custom.

11. All obligations assumed by the State, within the limits of the *Shari'a,* towards the non-Muslim citizens shall be fully honoured. They shall be entitled equally with the Muslim citizens to the rights of citizenship as enunciated in paragraph 7 above.

12. The Head of the State shall always be a male Muslim in whose piety, learning and soundness of judgement the people or their elected representative have confidence.

13. The responsibility of the administration of the State shall primarily rest in the Head of the State, although he may delegate any part of his powers to any individual or body.

Governance of the State

14. The Head of the State shall not function in an autocratic but in a consultative *(Shurai)* manner; i.e., he will discharge his duties in consultation with persons holding responsible positions in the government and with the elected representatives of the people.

15. The Head of the State shall have no right to suspend the Constitution wholly or partly or to run the administration without a *Shura.*

16. The body powered to elect the Head of the State shall also have the power to remove him by a majority of votes.

17. In respect of civic rights, the Head of the State shall be on the level of equality with other Muslims and shall not be above the Law.

18. All citizens, whether members of the Government officials or private persons shall be subject to the same Laws and the jurisdiction of the same courts.

19. The judiciary shall be separate and independent of the executive, so that it may not be influenced by the executive in the charge of his duties.

20. The propagation and publicity of such views and ideologies as are calculated to undermine the basic principles and ideals on which the Islamic State rests, shall be prohibited.

21. The various zones and regions of the country shall be considered administrative units of a single State. They shall not be racial, linguistic of tribal units but only administrative areas which may be given such powers under the supremacy of the centre as may be necessary for administrative convenience. They shall not have the right to secede.

22. No interpretation of the Constitution which is in conflict with the provisions of the *Qur'an* or the *Sunna* shall be valid."

Names of the ‘Ulama who participated in the Convention.

1. Maulana Sayyid Sulaiman Nadvi (President of the Convention).
2. Maulana Sayyid Abul A‘la Maududi, Amir Jama‘at-i-Islami Pakistan.
3. Maulana Mufti Muhammad Shafi‘, Member Board of Ta‘limat-i-Islamiya, Constituent Assembly of Pakistan.
4. Maulana Mufti Ja‘far Hussain, Member Board of Ta‘limat-i-Islamiya.
5. Professor Abdul Khaliq, Member Board of Ta‘limat-i-Islamiya.
6. Maulana Muhammad Zafar Ahmad Ansari, Secretary, Board Ta‘limat-i-Islamiya.
7. Maulana Shams-ul-Haq Afghani, Minister Religious Affairs Qalat State.
8. Maulana Ihtisham-ul-Haq, Muhtamim Dar-ul-‘Ulum-i-Islamiya, Tandu Allah Yar, Sind.
9. Maulana Badr-i-‘Alam, Head of *Hadith* Department, Dar-ul-‘Ulum-i-Islamiya.
10. Maulana Muhammad Yusaf Binnori, Shaikh-al-Tafseer Dar-ul-‘Ulum-i-Islamiya.
11. Maulana Muhammad ‘Abdul Hamid Qadari Badayuni, President Jami‘at-ul-‘Ulama-i-Pakistan.
12. Maulana Muhammad Idris, Shaikh-al-Jami‘a, Jami‘a Abbasiya Bahawalpur.
13. Maulana Khair Muhammad, Muhtamim, Madrassa Khair-u-Madaris, Multan.
14. Maulana Mufti Muhammad Hasan, Muhtamim, Madrassa Ashrafia Lahore.
15. Pir Sahib Muhammad Amin-al-Hasanat, Pir of Manki Sharif.
16. Haji Khadim-al-Islam Muhammad Amin, Khalifa Haji Tarang, Za’i, Peshawar District.
17. Qadi Abdu Samad Sarbazi, Qadi Qalat State.
18. Maulana Athar ‘Ali, Sadr ‘Amil, Jami‘at-ul-‘Ulama-i-Islam, East Pakistan.
19. Maulana Abu Ja‘far Muhammad Salih, Amir Jami‘at Hasbullah, East Pakistan.
20. Maulana Raghib Ahsan, Vice President, Jami‘at-ul-‘Ulama-i-Islam, East Pakistan.
21. Maulana Muhammad Habib-ur-Rahman, Vice President

22. Maulana Muhammad ‘Ali Jallundhari, Majlis-i-Ahrar-i-Islam, Pakistan.
    Jami‘at-ul-Madarrisin, Sarsina Sharif, East Pakistan.
23. Maulana Sayyid Muhammad Daud Ghaznavi, President Jami‘at-i-Ahl-i-Hadith, West Pakistan.
24. Maulana Mufti Hafiz Kifayat Husain, Mujtahid, Idar-i-‘Alia, Tahaffuz-i-Haquq-i-Shi‘a-e-Pakistan.
25. Maulana Muhammad Isma‘il, Nazim, Jami‘at-i-Ahl-i-Hadith, West Pakistan.
26. Maulana Habib Ullah Jami‘a Diniya, Dar-ul-Huda, Terhi, Khairpur Mirs.
27. Maulana Ahmad ‘Ali, Amir Anjuman-i-Khuddam-al-Din, Lahore.
28. Maulana Muhammad Sadiq, Muhtamim, Madrassa-i-Mazhar-al-‘Ulum, Khaddah, Karachi.
29. Maulana Shams-ul-Haq Faridpuri, Sadr Muhtamim, Madrassa Ashraf-al-‘Ulum, Dacca.
30. Maulana Mufti Sahibdad, Sind Madrassa al-Islam, Karachi.
31. Pir Sahib Muhammad Hashim Mujaddadi, Tando Saeendad, Sind.

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